

## Border Management and Migration Control – Comparative Report

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**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

Paper 2020/46, March 2020

## **Border Management and Migration Control**

### **Comparative Report**

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## About RESPOND

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research.
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and migration control, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centres, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

# Executive Summary

This report is the part of the WP 2.3 work package of RESPOND, which explores border management and migration controls in the eleven countries selected for the RESPOND project (Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom) between 2011 and 2017. The current report provides a comparative analysis of the legal frameworks and policy implementation in these eleven countries, drawing on the national reports submitted as the second deliverable of WP2.

The key aims of the report are to explore patterns of convergence and divergence in relation to law, policy and policy implementation between these countries, map the key actors involved in border management and migration control in EU & non-EU countries, as well as to explore how the governance of border management and migration control has changed between 2011 and 2017 in both EU and non-EU countries. Further, in order to contribute to the development of theoretical insights, we draw on key theoretical perspectives relating to border management and migration controls – such as literature on Europeanisation and the development of migration policy in the EU, and critical migration and border studies.

Key findings include:

- The border management and migration control legal regimes of the eight EU member states – with the exception of the UK – are largely harmonised at the level of formal transposition. However, there is still considerable divergence among the legal frameworks of the selected member states which can be partly attributed to the discretion allowed by EU legal frameworks in the process of transposition and competences reserved to member states, and partly due to national restrictive responses to the 2015 migration movements in certain countries.
- The domain of border management and migration controls is characterised by a high level of complexity in terms of actors. In most states of the Respond consortium, policies are implemented by civilian security bodies, while the role of military and para-military actors has risen in prominence.
- Border management and migration control as a cross-sectional policy field does not only involve a multiplicity of actors, but central coordination is often lacking, while a slight trend to establish the later after 2015 can be observed in some countries.
- Significant trends towards re-nationalisation are observed in the implementation of policies, exemplified by the prolonged introduction of temporary internal border controls by Austria, Germany and Sweden, and patterns of bilateral and multilateral cooperation among the security bodies of member states.
- A trend towards securitisation of the policy field and the tightening of border controls can be observed in all countries both in terms of policy and narratives. During the 2011-2017 period, and in particular since 2015, both EU and non-EU states tightened border controls, expanded internal control measures and the return regime, and created new border infrastructures ranging from walls and fences to detention centres that can be analysed as a 'hardening of the border'. This trend also reflects developments at the EU level.



- The impact of EU legal and policy developments is particularly noticeable in Turkey because of the accession and visa liberalisation processes, as well as the EU Turkey statement of March 2016. Similar trends can be observed in Lebanon and Iraq given cooperation agreements between the EU and these states. However, the expansion of border management regimes in these countries is more influenced by domestic security concerns, patterns of regional cooperation, mobility and conflict with neighbouring countries and the architecture of the border and migration controls as a global regime.
- Human and fundamental rights considerations have been weakened since 2015. Pushbacks can be observed at many borders, while some countries have introduced measures that allow for an expansion of refusal of entry. Detention both during the asylum process as well as a measure to facilitate return has been significantly expanded.

# 1. Introduction

This report provides a comparative analysis of the legal frameworks and policy implementation relating to the domain of border management and migration control in the eleven countries selected for the RESPOND project:

1. Austria (Josipovic and Reeger, 2019)
2. Germany (Hänsel, Hess and Kasperek, 2019)
3. Greece (Ilias et. al., 2019)
4. Hungary (Gyollai and Korkut, 2019)
5. Italy (Terlizzi, 2019)
6. Iraq (Warda et. al., 2019)
7. Lebanon (Jagarnathsingh, 2019)
8. Poland (Szulecka, 2019)
9. Sweden (Borevi and Shakra, 2019)
10. Turkey (Gökalp Aras and Şahin Mencütek, 2019)
11. UK (Karamanidou, 2019)

We use the term border management to refer to the EU's ensemble of legislation, policies, implementation practices, institutions, and actors that are concerned with defining, conceptualising, and policing of the external border of the member states of the EU. We use the term migration control to capture modes of control that might fall outside the scope of border management, especially as defined by the 2019 European Border and Coast Guard Directive (see Karamanidou and Kasperek, 2018). Drawing on the material provided in the country reports (deliverable 2.2), we focus on three key areas: 1) legal and policy frameworks, 2) policy implementation, and 3) key narratives and themes, including an emphasis on the various actors involved on border management and migration control.

The report has the following aims:

- To explore patterns of convergence and divergence in relation to law, policy and policy implementation in the domain of border management and migration control among the selected EU and non-EU states
- To map the key actors involved in border management and migration control in EU & non-EU countries, and re-conceptualise how they relate and interact with other actors, both within and beyond the EU
- To critically examine the influence of EU border management & migration control on non-EU countries
- To explore how the governance of border management and migration control has changed between 2011 and 2017 in both EU and non-EU countries, and critically engage with perceptions of 2015 as a 'watershed' moment.
- To consider the findings of the national country reports in light of existing theories and research insights relating to migration governance and the EU border regime.

The report starts with considering key theoretical perspectives relating to border management and migration controls. In particular, we focus on two dimensions: how migration governance is conceptualised through different theoretical approaches, and how these have explained shifts and transformation in the governance of borders and migration. Following this approach, we aim to elucidate, on the one hand, the complex interactions between legal instruments, implementation practices and actors, and on the other critically engage with the issue of change and transformation in governance especially in relation to the migration movements of 2015.

The report draws primarily on the findings of the 11 national reports, while some additional desk research in order to supplement the provided information was needed. It focuses on the macro level of legal frameworks and policy, and the meso level of implementation, drawing on the empirical data generated by country teams through interviews with key stakeholders. By implementation, we refer mainly to practices, especially when diverging from law or policy, thus precluding transposition of EU legislation into national law which we consider under the analysis of national legal frameworks and policies. While several of the reports incorporate insights from the micro level – interviews from refugees and asylum seekers – we do not draw on these as they will be the subject of a separate deliverable<sup>1</sup>. A further limitation concerns our discussion of key narratives: as two of the three non-EU country reports did not contain this task, the relevant section in this report draws on the analyses of the selected EU member states only.

The report is structured in the following manner. We first discuss theoretical insights on the conceptualisation of migration governance and policy change in the domain of border management and migration control. We draw on a range of theory and research on multi-level governance, Europeanisation, network and assemblage theories, and critical border and migration studies. The following section synthesises the findings of the 11 country reports on three areas: legal and policy frameworks, implementation and practices of border management and migration control, and key narratives. The section on legal frameworks and policy highlights key areas of divergence and convergence, while also taking into account changes in legal frameworks, especially in response to the 2015 migration movements. The section on trends and developments in implementation highlights dynamics which can be observed across the different countries studied for this report, both in terms of internal dynamics as well as with respect to arrangements in which the countries are actively involved. This is followed by an analysis of key narratives, which brings together the dominant discursive themes related to border management and migration controls in the eight EU member states. The last section discusses the findings in relation to the theoretical perspectives, and develops insights regarding the current state of the governance of border management and migration controls in the 11 selected countries, the configurations of key actors in the field, transformations of the EU border regime, and insight from comparing the EU and non-EU perspectives.

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<sup>1</sup> WP 2.5 Report on the impact of border management and migration controls on the experiences and practices of refugees.

## **2. Conceptualising Migration Governance and the Governance of Borders**

### **2.1 Multi-level governance and Europeanisation based approaches**

A starting point for conceptualising the governance of borders and migration controls is multi-level governance (MLG). Apart from being a key theoretical concept for the RESPOND project, it is also a model of governance that explicitly or implicitly informs a considerable number of publications on EU policies on migration, including on border management and migration control (e.g. Ripoll Servent and Trauner, 2014; Hampshire, 2016; Trauner and Ripoll Servent, 2016; Bonjour, Servent and Thielemann, 2018; Slominski and Trauner, 2018). Further, the analysis of policy making and implementation in the asylum and migration domains within the EU, mainly in political science and political sociology, draws largely on theories of European integration – liberal intergovernmentalism (e.g. Moravcsik, 1993, 1998), neo-functionalism (Haas, 1958; Sandholtz and Stone Sweet, 1998), post-functionalism (Hooghe and Marks, 2001, 2009; Börzel and Risse, 2018) and institutionalist approaches. The latter include formal institutionalism (e.g. Tsebelis and Garrett, 2001), rational choice institutionalism (e.g. Thomson et. al., 2006), constructivist institutionalism (e.g. Risse, 2004), and historical institutionalism (e.g. Steinmo, Thelen and Longstreth, 1992; Jenson and Mérand, 2010; Wolff, 2012).

In a multi-level polity such as the EU, policy making and policy implementation are dispersed among supranational, national and sub-national levels: EU institutions and agencies; national governments, ministries and national authorities; regions, and cities (Hooghe and Marks, 2001; Scholten and Penninx, 2016). Multi-level governance approaches stress the analytical importance of focusing on relations between the different levels (Scholten and Penninx, 2016; Panizzon and van Riemsdijk, 2019). Thereby, the process of Europeanisation<sup>2</sup> has engendered a relative loss of sovereignty and power for member states, and the gradual sharing of authority and competences among national, supranational and sub-national institutions (Bevir and Phillips, 2017; Hooghe and Marks, 2001, 2003; Scholten and Penninx, 2016).

The architecture of multi-level governance of asylum and migration policy is similarly linked to a process of Europeanisation within the framework of the EU. While migration and asylum governance was a strongly intergovernmental field, anchored in formal and informal cooperation between member states in the 1970s and 1980s, it has been gradually Europeanised through various policy developments: the creation of the Schengen Area, the supranationalisation of migration competencies from the Third Pillar to the First Pillar with the

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<sup>2</sup> When we use the term ‘Europeanisation’, we do not use it in the sense of e.g. Featherstone and Radaelli (2003). The emergence of their specific analytical angle marks an important milestone in research on Europe, i.e. research that is no longer concerned how ‘Europe’ is being constructed by its member states, but rather and inversely how European legislation affects national policies and local contexts. In the context of this report, we use a broader meaning of the term Europeanisation, i.e. the overall phenomena of European integration and its related policies and developments.

Treaty of Amsterdam (1997/99), the adoption of common legislative frameworks such as the CEAS, including the Dublin regulation and the Returns Directive, the establishment of European agencies such as Frontex and EASO and more recently the EBCGA, and the increased powers of the European Parliament under the co-decision arrangements introduced by the Lisbon Treaty (Baird, 2015; Hampshire, 2016; Trauner and Ripoll Servent, 2016).

These developments have been theorised through the lens of theories of European integration. Explanations drawing on **liberal intergovernmentalism** have stressed the state's drive to preserve sovereignty and avoid domestic conflict and constraints in policy making (Börzel and Risse, 2018; Guiraudon, 2000; Kaunert and Léonard 2012). The transfer of competencies to EU institutions is depicted as instrumental in achieving desired policy goals and outcomes (Bonjour, Servent and Thielemann, 2018; Hampshire, 2016). **Neo-functional approaches** regard these developments as spill over effects from European integration itself creating functional interdependencies of policy sectors which require more integration, resulting in the transfer of powers to supranational institutions (Beck and Grande, 2007; Baird, 2015; Niemann and Speyer, 2018). In this logic, for example, the need for free movement within Europe engendered a drive for supranationalising controls at the external borders which was accepted as a solution by domestic elites (Börzel and Risse, 2018; Niemann and Speyer, 2018). From the very beginning this was accompanied by a policy of externalization of European border and migration control policies and the inclusion of third countries into its rational (as an attempt to 'venue shop outwards', see Guiraudon and Lahav (2000)) thus transnationalising the multi-level governance architecture of the EU.

What differs in these approaches is the relative degree of power and conceptual significance attributed to the supranational and national actors within the framework of multi-level governance. **Liberal intergovernmental approaches** regard member states as the most powerful actors in the context of multi-level governance, stress their impact on policy making within formal EU institutions such as the Council of Ministers, and conceive cooperation as driven by member states (Hampshire, 2016), often in informal fora in order to bypass EU laws and institutions (Cardwell, 2016; Hampshire, 2016; Trauner and Ripoll Servent, 2016), or domestic legal and judicial constraints – the 'venue-shopping' thesis (Guiraudon 2000). **Neo-functional and institutionalist approaches**, on the other hand, emphasise the increasingly stronger role of European institutions in policy making, judicial oversight and implementation fields (Bonjour, Servent and Thielemann, 2018; Hampshire, 2016) and in the field of implementation, the increasing powers of agencies such as EASO and Frontex, but also the diffusion of implementing powers among the supranational, national and subnational levels (Baird, 2015).

While the focus of such literature is often on the European Union, the concept of multi-level governance has been also employed to analyse the external dimension of EU migration policy (Panizzon and van Riemsdijk, 2019; Trauner and Wolff, 2014) – the linkage of migration and asylum policies to relations with other states and the 'export' of EU borders and border control policies to non-member states (Baird, 2015; Haddad, 2008; Paoletti, 2010). Such arrangements can be located at the supranational level – for example, European Readmission Agreements are negotiated between the EU and third countries – but also the national level, in the case of bi- or multilateral agreements between member states and third countries (Panizzon and van Riemsdijk, 2019; Trauner and Wolff, 2014). However, the externalisation of migration and border policies often involves a multiplicity of non-EU actors - , such as intergovernmental organisations the UNHCR, the IOM and the ICMPD, national agencies like

the GIZ in Germany, and NGOs - and is implemented via more informal 'processes', 'dialogues' and regional consultations (Düvell, 2002; Hess, 2010; Georgi, 2007; Guiraudon and Lahav, 2000).

Regardless of the different theoretical explanations, the field of border management and migration control is thus conceptualised as combining both supranational – such as Schengen and the European Border and Coast Guard Agency (EBGCA) – and intergovernmental arrangements – such as the significant policy making and implementing competencies remaining with member states (Hampshire, 2016), whereas the institutional legacies of the intergovernmental era have privileged the influence of member states, despite the rise of competencies of EU institutions and agencies. This results in MLG arrangements characterised by the uneasy coexistence of liberal intergovernmental and supranational arrangements (Baird, 2015; Trauner and Ripoll Servent, 2016). Scholarship on the externalization of EU policies reflects a similar 'intergovernmental' emphasis whereby non-EU states are often conceptualized as being somewhat passive receptors of EU policy initiatives and actions (Trauner and Wolff, 2014; Wunderlich, 2012). Yet, the complexity of institutional arrangements, actors, and vertical and horizontal interactions among levels in the external dimension of EU border management and migration control has also been showcased (Collyer, 2016; Fakhoury, 2019; Panizzon and van Riemsdijk, 2019).

Even if MLG approaches acknowledge the increasing influence of further intergovernmental agencies, such as the UNHCR, the IOM, or the ICMPD, or private and non-state actors such as international, national and local NGOs, grassroots activist and solidarity groups, for-profit actors, militias, or migrants themselves – they continuously privilege formal, state-like actors in their conceptualisation of the architecture of the EU asylum and migration policy, whether supranational or national and stick to the different neatly, clear cut levels. Additionally, by mainly focusing on the legal and institutional dimensions and stressing rationality as main mover of policy making, most MLG approaches underplay the significance of discourses, practices and temporal and spatial dimensions that define how border management and migration control policies are being envisioned, designed, performed and put into practice.

## **2.2 Assemblages, Networks, and European Border Regime**

The theories on European integration previously sketched out share one trait in that the different scales between the local and the supranational are taken as a fundamental (and clear definable) unit of analysis. This is of course most pronounced in the case of multi-level governance, which builds its entire analysis on the assumption of different scales that ideally can be separated. However, recent scholarship in MLG has also started to de-emphasise the concept of levels, focussing on networks or assemblages of actors from different levels (Panizzon and van Riemsdijk, 2019; Fine and Thiollet 2020, 11ff.). As we already indicated, the field of migration and border governance within the EU-framework, as well as in regard to its external dimension, is implemented by a multiplicity of actors, EU and national agencies, intergovernmental organizations and non-state and civil society actors of diverse degrees of institutionalisation, professionalization and internationalization. This multiplicity and diversification of actors is also acknowledged by the 'migration management' literature as well.

Migration management not only denotes a shift away from a zero migration policy to a conceptualization of the possibility to steer orderly migration processes but also suggests far reaching structural as well as practical transformations concerning the mode of governance and the type of actors involved (Gosh, 1997; Georgi, 2007; Cornelius *et. al.*, 1996, Overbeck, 2002). Thereby the literature emphasises 'new actors of international politics' like international organizations or even private actors like 'think tanks' (cf. Düvell, 2002; Georgi, 2007, 67f.; Guiraudon and Lahav, 2000, Geiger and Pécoud 2010).

We find such conceptualisations not only in studies on migration and border governance in the context of the EU, but also in the study of other policy fields like climate policy and the emergence of global regimes. These two phenomena share that they are – at their core – concerned with the emergence of an order above the level of the nation state, but at the same time involving transformative effects that are felt below the level of the nation state. However, neither Europeanisation nor globalisation can be perceived or analysed as a form of federalism, i.e. the construction of a supranational state with existing nation state as its building blocks. Rather the process of Europeanisation within the EU framework itself creates new constellations of actors, new relations, power dynamics and new conflicts (*Konfliktlinien*) criss-crossing the different scales, so that the EU can be described as a new multi-layered network-like figuration (*Konfliktraum*) (Welz and Lottermann 2009). Ulrich Beck and Edgar Grande therefore describe the EU as an 'transformation regime', transforming the very mode of governance (2007).

Precisely in order to capture the emergence of a new order on a global level, scholars of globalisation such as the sociologist Sassen and the cultural anthropologists Ong and Collier have applied the concept of assemblages to the study of globalisation (Sassen, 2008; Ong and Collier, 2005). Drawing on the Deleuzian notion of assemblages or agencements as instable, fluid and ever-emergent ensembles of disparate objects such as e.g. legal orders, policies, institutions, discourses, architectures and diverse materialities, their approach pays attention to similar fields as the study of European integration detailed above. However, the main difference is that this approach does not *per se* entail a hierarchical ordering, but that it arranges these objects in a networked manner. Such a conceptualisation has the added advantage of allowing for a study of their respective enactment in localisable settings.

The inherent quality of emergence and instability captured in the notion of an assemblage may however not be that easily applied to Europeanisation. Indeed, globalisation has led to much more unstable forms of institutionalisation than what has been observed in European integration. Stable global institutions have thus far not emerged, unlike in the case of European integration, where the creation and solidification of actors such as the Commission, the Council and the Parliament – to name but the obvious – can be clearly identified. However, their relation to the member states and the role of the other actors, traditionally defined as non-state, is more complicated than a hierarchical ordering along scales or levels would suggest. For example, James Ferguson's notion of transnational governmentality denotes a process in which local non-state actors like NGOs take on the role of state-like actors and with it are changing the scale from local to national or global. The sociologist Barry has showcased an analysis of European integration as the creation of technological zones erected by networks of expertise that cut across the existing scales (Barry, 2001, 2006).

Additionally, Bigo shows in his analyses of the emergence of a 'transversal field of in/security' politics that it is 'deployed at a level that is reducible neither to the national political field, nor

to a level between two nations, or even to the European level' (Bigo, 2008, 29). Walters and Haahr (2005) describe the emergence of 'Schengenland' as a transnational network. They argue that 'the political space of Schengenland is not one where policing and security takes the form of a European superstate [...] Instead it is a model of networks and of transnational liberal policing' - transnational as it connects experts and agencies across borders and 'liberal' as it is 'networking existing agencies as a more economical and lighter form of governing than extensive new European bureaucracies'; new European agencies may be created 'but they have to coordinate not replace national systems'. Schengenland does not repeat the process of state formation, rather it 'invents other ways to distribute, network and circulate authority', by the way of data-bases (such as SIS and Eurodac), the adoption of 'common practices' (such as visa), the 'harmonization of standards such as external border management' and by 'proxy-European authorities' (particular states that take certain actions on behalf of the wider European community such as institutionalized by the Dublin convention) (Walters and Haahr 2005, 205). Walters then applied this approach to many fields that are of interest to the RESPOND project, such as Schengen (Walters, 2002), European agencies (Barry and Walters, 2003), borders (Walters, 2004a; b; 2009) and deportation (Walters, 2019).

Beyond this body of work, Foucauldian notions such as the 'apparatus' as a more stable or sedimented variant of the assemblage have been productively used in the anthropological study of specific European policy fields, localisable effects or concrete actors (Feldman, 2012). An alternative formulation would be the notion of a European border and migration regime (Sciortino, 2004; Tsianos, Hess and Karakayali, 2009; Hess, 2010). The notion of 'border and/or migration regime' draws both on the concept of international regimes (Krasner, 1983) and on insights of critical state theories and the anthropology of the state (Trouillot 2001), which conceptualise the state in a constructivist manner, as a set of forces and practices of becoming and acting like a 'state'. Thus, it underscores how a multiplicity of actors without a formal hierarchy cooperate (or not) in order to establish a supranational order and a certain stability. Regime theory is therefore similarly interested in a heterogeneous ensemble of actors and actants, however pointing to the constant modes of contention, conflictual negotiations and situational alliances that can be observed within the regime.<sup>3</sup>

The RESPOND methodology reflects the multilevel governance architecture of the field of migration and border policy within the EU-framework by shedding light on the Europeanisation and harmonisation of border management policies as well as by analysing the transposition of EU law into national legal frameworks and national developments in the 11 RESPOND countries. However, RESPOND additionally pays attention to the 'meso level' of political stakeholders as municipal administrations and non-state actors like NGOs as well as to the micro level of migrants themselves. These dimensions and actors complicate conceptualisations of multi-level governance that portray the different levels as clearly definable; rather all three levels together as well as a focus on actors, implementation and

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<sup>3</sup> Both the 'ethnographic border regime analysis' as well as the 'non-local ethnography' as proposed by Feldman (2012) conceptualise the field of study as networks, which allows for a detailed study of Europeanising dynamics by focusing on particular settings, such as in a detention centre at the border of Europe, a round-table discussion in Brussels, a virtual community of experts facilitated by information technology, etc.



practices as well as narratives indicates a complex regime approach that is challenged by the movements of (forced) migration.

## 2.3 Explaining Changes in Policy

One question that underpins the scope of WP2 concerns shifts and transformations in the governance of border management and migration control. Literature drawing on theories of European integration tends to focus on the role of member states or European institutions. For liberal-intergovernmental approaches, the drivers of policy change (or conversely stability) are member states, depending on their preferences and interests, which generally are considered to veer towards more restrictive policies – however defined (Bonjour, Servent and Thielemann, 2018; Hampshire, 2016). Neo-functional approaches see policy change as rooted **in self-perpetuation dynamics for further integration**, which provides the impetus for addressing existing functional mismatches arising from partially integrated policies (Niemann and Speyer, 2018). Further, policy actors are socialised into cooperating within EU institutional arrangements (Niemann and Speyer, 2018). Beyond the commission's role as an initiator of policy change (Niemann and Speyer, 2018), supranational institutions are assumed to have more 'liberal' policy preferences, curtail the restrictive tendencies of member states and steer policy changes towards more harmonisation – albeit often in the form of adopting minimum standards (Bonjour, Servent and Thielemann, 2018).

Institutionalist approaches emphasise institutional change – for example in the form of the Amsterdam and Lisbon treaty reforms - as the driver for changes in policy (Trauner and Ripoll Servent, 2016). New decision-making procedures, for instance, favoured compromise and seeking consensus among EU institutions and member states (Trauner and Ripoll Servent, 2016). Yet, for Bonjour et. al. (2018) the scope of policy changes is curtailed by the 'growing weight of consensus and compromise in EU policy making' (Bonjour, Servent and Thielemann, 2018, p.416; Trauner and Ripoll Servent, 2016). Within an MLG framework, analyses adopting an institutionalist approach emphasise the complexity of relations among actors and the **unpredictability of policy change processes and outcomes** (Bonjour, Servent and Thielemann, 2018; Trauner and Ripoll Servent, 2016). Post-functional approaches, on the other hand, have drawn of the 'politicisation of migration' which regards domestic actors as sensitive to perceived hostile views to migration among publics and public reactions over the perceived loss of sovereignty, and therefore may resist to policy change towards greater supranationalisation (e.g. Börzel and Risse, 2018). The distribution of competencies among actors and levels, and disagreements over governance arrangements and the direction of policies have engendered significant policy tensions before 2015 (Hampshire, 2016). Yet 2015 is increasingly regarded as a turning point in recent scholarship on the EU.

Some recent studies on the events of 2015 and its repercussions define external events outside Europe as a main driver for policy changes (Hampshire, 2016). Events such as the Arab spring and the conflict in Syria, which engender movements towards Europe, are depicted as causing a 'crisis' for European migration policy (Hampshire, 2016). In contrast, Trauner and Ripoll Servent (2016), from an institutionalist perspective, argue that it is not the external events per se that drive change but they manner in which they are constructed and acted upon by EU institutions and member states. Discursively, this is illustrated by the manner in which the Arab spring movements, for example, were constructed as a 'crisis of Schengen', while the 2015 movements as a 'migration crisis' or 'refugee crisis'. Some recent

literature in contrast interprets the 'crisis' (Niemann and Speyer, 2018, p.29) as a result of 'existing dysfunctionalities' due to an incomplete integration and harmonisation in the domain of border and migration management, or as an outcome of 'deeper gridlock' resulting from 'structural deficiencies' of the CEAS (Rizcallah, 2019, p.2)

However, the diagnosis of policy responses varies widely among recent scholarship, oscillating between a re-nationalisation and strong intergovernmental tendencies on the one hand and the observation of strong supranationalizing efforts on the other. There is little disagreement that responses to the migratory movements of 2015 were indicative of strong(er) intergovernmental tendencies – the re-introduction of temporary border controls, more informalisation and resistance to supranational solutions such as relocation (Hampshire, 2016; Niemann and Zaun, 2018). Hampshire (2016) and Börzel and Risse (2018) both point to the right-populist politicisation of migration as an explanation for the responses of many member states to tighten the borders and restrict the access to the asylum and protection regime.

Yet, Niemann and Speyer (2018) argued that the 2015 'crisis' provided the impetus for greater supranationalisation, exemplified by the establishment of EBCGA and the increase of supranational competencies in the field of border controls. In this case, member states did not resist the Commission's initiative, which they attribute to several reasons: the economic and political costs of obstacles to free movement within Schengen; functional legacies of cooperation within fora such as the Council of Ministers and Strategic Committee on Immigration, Frontiers and Asylum (SCIFA); the Commission's rationale for the 'necessity' of strengthening external border controls (Niemann and Speyer, 2018). Further, one widely accepted policy development is the renewed focus on the externalization of migration governance, in particular through informal, intergovernmental arrangements like the EU-Turkey deal (Cardwell, 2016; Niemann and Zaun, 2018; Panizzon and van Riemsdijk, 2019).

Without rehashing the well-worn critiques of these models, suffice to say that the theoretical strands discussed so far tend to privilege institutional actors – whether member states or European institutions – afford a limited role to non-state actors and migration as such, overemphasise rationality and make often unsupported assumptions about the preferences of the key actors – for example for restrictive policies in the case of member states, and 'liberal' policies in the case of EU institutions and in particular the Commission (Bonjour, Servent and Thielemann, 2018; Hampshire, 2016; Jenson and Mérand, 2010; Trauner and Ripoll Servent, 2016). Additionally, politicisation arguments tend to over-rely on the role of radical right parties as drivers of dominant attitudes among publics (Börzel and Risse, 2018; Hampshire, 2016). This underestimates not only the legacy and effects of securitising and illegalising policies and discourses both at the EU and national levels and among 'mainstream' political parties, as well as the impact of other social institutions – such as the media – in legitimating and reinforcing them. However, this lens also doesn't take into account the continuing existence of human rights based and pro-migration orientated discourses and practices.

In contrast, regime theory tends to include migratory movements much more strongly into considerations of policy change. Sciortino explains policy change as a recurrent effort to correct measures and to adjust to new migratory practices (2004, p.32f.) resulting in a structural crisis mode of migration governance in regimes. If regimes are constantly challenged by migration to adjust and to fix perceived deficiencies, these challenges translate, and are localisable, in 'border struggles' (Mezzadra and Neilson, 2013, p.264ff.). In these

struggles, which are not necessarily restricted to border sites, both modalities of control and subjectivities are negotiated, thus conceptualising migration as a co-constitutive force for border and migration regimes and at the same time highlighting the tension and frictions inherent in them.

### 3. Comparative Findings from the National Reports

The comparative report is based on eleven country reports that were prepared by the members of the RESPOND consortium. These countries can be clustered according to various categories. Eight countries are members states of the European Union (UK<sup>4</sup>, PL, SWE, GER, AUT, IT, HU, GR), seven are full members of the Schengen Area (PL, SWE, GER, AUT, IT, HU, GR), six share internal land borders with other Schengen members (PL, SWE, GER, AUT, IT, HU), and four maintain an extensive portion of the external Schengen border (PL, IT, HU, GR). Concerning the migrations across the so-called Balkan route of 2015, six countries need to be considered (SWE, GER, AUT, HU, GR, TUR), of which three can be included into a category of destination countries (SWE, GER, AUT). All the non-EU member states covered by the reports can also be considered destination countries (TUR, LEB, IRQ), while both Turkey and Lebanon need to be additionally considered as transit countries especially for forced migrations from the Syrian civil war. Only Turkey maintains a sizeable shared border with an EU member state (i.e. Greece and to a lesser extent Bulgaria). All three non-EU member states accommodate large refugee populations *inter alia* from the Syrian civil war, either in total numbers or per capita.

This clustering already reveals that the country reports which form the base of this comparative report cover a wide and heterogeneous range. In this section of the report, we aim to identify and compare trends, dynamics and developments in the implementation of border management and migration control in the countries covered by the reports. To this end, this section excludes legislative developments as well as political (discursive) dynamics as these will be covered in different section of this report. Together, these three sections form the base for the analytical chapter.

The **UK**, and to a lesser extent **Poland**, occupy a particular position with respect to the subject matter of this report. Historically, the UK's border management and migration control system developed at a distance to the EU's border and migration policies, as evidenced by the only partial participation of the UK in the Schengen system. Given the postcolonial condition which until today structures the patterns of migration to the UK and the UK's insistence on maintaining a national border regime, the UK is not representative *per se* of larger European trends. However, as the country report on the UK notes, the UK does not necessarily oppose EU legislation, but rather prioritises its own national sovereignty over Europeanised concerns and rationalities (Karamanidou, 2019, p.9).

The **UK** and **Poland** can be singled out amongst the countries this report covers since they have been neither a transit nor a destination country for the forced migrations of 2015. Indeed, only few refugees from Syrian have reached those two countries, and while the national

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<sup>4</sup> The UK exited the European Union on the 31<sup>st</sup> January 2020 but was a member state during the period considered in this report

political discourses certainly reacted to the unfolding dynamics, their respective politics of border management and migration control have been more concerned with (labour) migration from the East – Belarus and Ukraine – and at times with refugee migrations from Chechnya in the case of Poland, and both labour migration and asylum seeking in the case of the UK.

As the analysis of trends and dynamics will show, **Sweden**, **Germany** and **Austria** can not only be clustered as destination countries for the forced migrations of 2015 but their political responses are also comparable. All three countries do not maintain extensive portions of the EU's, and even Schengen external border, but are situated rather centrally within the Schengen area. Additionally, all three countries have long developed extensive asylum systems. To this end, the policy responses of these three countries are characterised by a selective introduction of national border controls, a focus on tightening internal controls, and an emphasis on strengthening return policy and practice as well as in the case of Germany a reinforced commitment to the external dimension referred to as an 'externalization strategy' (*Vorverlagerungsstrategie*) (2019: 25)

**Hungary** stands in stark contrast to these three countries in various respects. It maintains not necessarily a large, but pivotal part of the EU's external border with Serbia (as well as Ukraine), as well as Schengen borders with the EU member states of Rumania (with delayed full Schengen accession) and Croatia (full Schengen accession expected for 2020). While Hungary favours a policy of open borders on ethnic grounds, i.e. for Hungarian minorities in neighbouring countries, its government over the last year has been staunchly opposed to the access and settlement of refugees and has taken the lead in opposing such policies – such as the resettlement decisions of the Council in 2015 or the general introduction of a quota system – on the European level. To this end, Hungarian responses to the forced migrations of 2015 which to a large extent transited through Hungary are constituted by the establishment of a materially hard border, an expansion of border control practices to its entire territory, and a severe restriction of asylum procedures and related practices.

Such an almost total closure of borders towards forced migration and such a territorial homogenisation of border management and migration control practices cannot be observed in the other two EU member states with extensive portions of the Schengen border analysed in this report, i.e. **Italy** and **Greece**. For Italy, the respective country report observes ambivalent approaches. Concerning the Southern maritime external border, the report highlights a long-standing Italian policy of securitisation of the border, at times more strongly inflected with humanitarian notions as well as continuous efforts to externalise migration control across the Mediterranean into Northern Africa. The adoption of the hotspot approach for the South, i.e. the deployment of various EU agencies in reception centres at the border is a particularly vivid example. For the North, i.e. towards Slovenia, Austria, Switzerland and France, the report notes an intensification of control practices targeting inbound migratory movements, while the regulation of outbound migration remains at a low priority for the Italian government, and is rather imposed by the respective neighbouring countries.

For **Greece**, the territorial division is even more striking, as three different regimes of border management and migration control can be observed. The hotspot approach has transformed the five islands of the East Aegean which were the main point of entry for the migrations of 2015 into a zone of separate jurisdiction with the large-scale presence of European agencies, however building on previous Greek efforts at overhauling border management and migration

control policies and practices dating back to at least 2011. The Evros land border with Turkey in Greece's North-East appears to remain in a mode of sovereign, national control with little – albeit noteworthy – European participation and scrutiny. Reports indicate that pushback practices towards Turkey have and still do constitute a key mode of border management and migration control. Greece's mainland however has undergone large transformations through the gradual adoption of European instruments of asylum administration, turning Greece from a previous country of transit into a country of forced residence.

**Turkey** then constitutes the most ambivalent case study, highlighting various oscillations between sovereign national interests and policy demands from the EU through the accession process on the one hand, and between humanitarian rationales and security interests on the other hand. Similar to the Italian case, Turkey's border with Syria where a solid fortified wall was built and its Western maritime border with Greece (and thus the EU) that is still porous are distinct from each other. Between these borders we find efforts of the Turkish nation state to transform its institutions in charge of migration and border management into an ensemble more recognisable to European notions of migration management in line with the accession process while factoring in security implications raised by the ongoing civil war in Syria. Again similar to the Italian case, Turkey has often resorted to direct cross-border interventions.

**Lebanon**, another country directly neighbouring Syria, and host to a large refugee population from the civil war, is an especially salient example for the heterogeneity which has already become apparent so far. While its Southern border with Israel is one of the rarer examples of a hermetically sealed border, the remaining border with Syria can be considered porous with a high occurrence of irregular migration but heavily militarised at the same time. However, control of the border is not as territorially bounded as one might expect from a superposition of Westphalian notions of borders to the Lebanese case. To this end, the report on Lebanon highlights that the emergence of Lebanon's borders must be read against its specific colonial history and legacy, and that the notion of border in the Lebanese context should rather be understood in line with concepts such as *frontiers*, *symbolic boundaries*, *fluid borderlands* or 'dynamic spaces of historic interaction' (Jagarnathsingh, 2019, p.9). Such a careful analysis is extended to the migration control to the interior of the country, where the report similarly points out that the institutions of the state and their control potential are results of 'complex hybridisation[s] between state and non-state authoritative actors' (Jagarnathsingh, 2019, p.22), including external actors.

Such an analysis certainly also applies to **Iraq**. As the country report points out, the emergence of state institutions tasked with border management and migration control has to be read against the *nation building*-efforts of the Coalition Provisional Authority during the occupation of Iraq. Similarly, provisions of autonomy and aspirations to independence in the Kurdish North, as well as the temporary, but complete loss of control over the Iraqi-Syrian border due to the expansion of territorial control by ISIS constitute pivotal events in the dynamic that shapes border and migration policies in Iraq.

However, the salience and applicability of the analytical approach put forward in the report on Lebanon cannot be limited to states without EU membership. As the following discussion of trends and dynamics will underline, notions of border, border management, and their role in migration management are multivalent within the EU, too and need to be interrogated through genealogical as well as governmental perspectives, despite continued efforts within the EU of defining, introducing and implementing a notion of *European integrated border management*

(Karamanidou and Kasperek, 2018). The migrations of 2015 have foregrounded these different and differing historical legacies and have put them – at times – into sharp contrast. In a similar vein, the country reports all highlight that in any given country, the multiplicity of actors involved in border management and migration control needs to be noted, and thus form part of an analysis: complex hybridisation applies to the member states as well, especially in the emergent assemblages of sovereign, supranational and non-governmental actors created through the hotspot approach, as well as in new forms of bilateral and multilateral co-operations.

## 3.1 Legal and Policy Frameworks

Our first dimension of analysis concerns legal and policy frameworks, and particularly the transposition of EU legislation into national legislation. We analyse the different sub-fields in four sections: pre-entry controls, at-the-border-controls, internal controls, as well as return and detention.

### 3.1.1 Pre-entry controls

#### 3.1.1.1 Visas

The EU legal framework on visas has been further harmonised with the recent introduction of Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, which replaced the previous Council Regulation (EC) No 539/2001. With the exception of the UK, all other selected member states follow the legislative framework on visas. Thus the issuance of short term visas is regulated by EU law, while member states retain competencies over the issuance of long-term visas, in addition to national visas issued under article 25 of the Visa Code. There is, therefore, some divergence at the level of national policy. **Hungary**, for example allows visa free travel for nationals of countries who have been on the 'black list' of Council Regulation 539/2001 and Regulation 2018/1806, such as Kyrgyzstan and Turkmenistan (Gyollai and Korkut, 2019). Both **Poland** and **Hungary** operated visa exemptions for Ukrainian citizens before Ukraine was added to the white list of countries whose nationals do not require visas (Gyollai and Korkut, 2019; Szulecka, 2019).

**Lebanon**, **Iraq** and **Turkey** operate their own domestic legal systems. In **Lebanon**, the legal framework allows for visa-free travel for the citizens of seven Arab states<sup>5</sup>, a category of 79 countries which can obtain cost-free visas for one month which can be extended to three months upon entry, and a black list of countries with higher requirements to obtain a visa (Jagamathsingh, 2019). In **Turkey**, the visa regime is more aligned to the provisions of the EU visa code as a result of the country's accession talks and the EU-Turkey readmission agreement, although it allows for visa exemptions for some countries in the EU black list (Gökalp Aras and Şahin Mencütek, 2019). **Iraq** similarly operates a system whereby some Arab, Middle Eastern and the 'global north' countries can obtain a visa on arrival, while citizens of the 'global south' countries require a visa before arrival. Similar to Turkey, the EU-

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<sup>5</sup> Jordan, Bahrain, Kuwait, Oman, Qatar, UAE and Saudi Arabia

partnership and Cooperation Agreement refers to visas as an area to be aligned with the Schengen Acquis, and requirements for entry are similar to those of the Schengen framework. It is regulated in domestic law by the Foreigners' Residency Law No 76 of 2017 and previously the Coalition Provisional authority orders (Warda et. al., 2019). Both **Turkey** and **Lebanon** tightened entry and visa requirements for Syrian nationals in response to movements from this country, replacing previous, more liberal arrangements that encouraged cross border mobility (Gökalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019).

### 3.1.1.2 Carrier Sanctions, Advanced Passenger Information, Passenger Name Records

All EU member states in the scope of this report have transposed Council Directive 2001/51/EC. but differences can be observed in the transposed provisions of the directive. The level of fines imposed, for example, varies drastically among member states. The minimum level of fines, for example, is £2000 in the UK and €3.500 in Italy. Maximum fines range from £2000 in the UK to over the €500,000 allowed by the Directive in Poland, and €700,000 in Greece (when a person dies during transportation). In Greece, the legal framework imposes custodial sentences of more than 10 years to life imprisonment (Ilias et. al., 2019). In Hungary, the level of fines is determined by the national police (Gyollai and Korkut, 2019). In what concerns those seeking international protection Greek and Austrian law explicitly exclude rescue operations from the scope of penalties, while the UK does not.

All EU member states in the scope of this report have transposed *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* and *Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*. The **UK** extends the scope of directive 2004/82/EC to rail and sea transport (Karamanidou, 2019), while in **Sweden** the scope is limited to air carriers only (Borevi and Shakra, 2019). In **Greece** and **Italy**, the PNR directive applies to intra-EU flights in addition to extra-EU flights designated in the directive. Fines for non-compliance range from a minimum of €3000 in Greece and Hungary to a maximum of €5,000 (Greece) to €50,000 (Italy). In some countries, Advanced Passenger Information (API) data are transmitted to several authorities, such as the Customs Agency and the Financial Guard in **Italy**, the Police and HMRC in the UK, while in **Poland** a wide range of named institutions have access to PNR data, including military bodies. **UK** law does not specify which 'competent authorities' have access to PNR data.

Both **Turkey** and **Iraq** have adopted carrier sanction legislation. In **Iraq**, they were introduced under the Coalition Provisional Authority in 2004, while in **Turkey** as part of the negotiations for the EU-Turkey Readmission agreement. Carriers in Turkey must also collect information on the internal travel of recipients of conditional refugee status and temporary protection status (Gökalp Aras and Şahin Mencütek, 2019).

### 3.1.1.3 Immigration Liaison Officers (ILOs)

All selected EU countries have transposed the ILO directive. In some cases (**UK, Germany, Sweden, Austria, Sweden, Italy**) legislation and practice predated the transposition of the Directive (ECORYS and International Centre for Migration Policy Development, 2018). In

others, like **Hungary**, legal frameworks and the development of ILO networks followed the introduction of the directive (Gyollai and Korkut, 2019). In addition to the ILO framework, some countries (**Germany, Italy**) are participating in the European Return Liaison Officers (ERLO) and European Migration Liaison Officers (EMLO) networks under Regulations 1168/2011 and 1624/2016.

Liaison officers from the selected countries are deployed in Turkey and Lebanon, which are also considered priority countries for the deployment of EMLOs. The first European Border and Coast Guard (EBCG) liaison officer was also deployed in Turkey (ECORYS and International Centre for Migration Policy Development, 2018) after 2016.

### 3.1.2 At-the-border controls

The 'at-the-border' domain of controls is largely harmonised in terms of European law, with the exception of the UK, which has opted out of the Schengen Acquis in this area apart from the facilitators package. While greater divergence is observed at the level of implementation, in some countries the EU legal framework – specifically the provisions of the Schengen Borders code – co-exists with domestic instruments – such as the 2003 law on Foreigners in **Poland**, Laws 3386/2005 and 4251/2014 in **Greece**, GrekoG (No 435/1996) in **Austria** and, inter alia the Criminal Code in **Hungary** – which elaborate on areas such as irregular entry. Some of these instruments are linked to the 2015 developments – for example in Hungary and Greece – in other cases they pre-existed.

While those seeking international protection are generally excluded from the scope of provisions regarding refusal of entry, in practice national frameworks create legal spaces between unauthorised entry and seeking asylum, which may permit authorities to refuse entry or to detain at the border persons seeking international protection. In **Greece**, persons arrested for entering in an unauthorised manner can be detained for 48 hours until they declare their wish to request asylum and are directed to reception facilities for identification and screening (Ilias et. al., 2019). In **Italy**, migrants rescued or intercepted at sea are taken to hotspots and can be issued with refusal of entry orders if not intending to claim asylum (Terlizzi, 2019). In **Hungary**, the border area was extended from 8 km to inland in 2016, allowing the return of apprehended migrants to the transit zones and therefore precluding their entry into Hungarian territory (Gyollai and Korkut, 2019). The introduction of temporary internal border controls in **Austria, Germany** and **Sweden** under the Schengen Borders Code further facilitated the refusal of entry at the borders for persons seeking international protection (Hänsel, Hess and Kasperek, 2019; Josipovic and Reeger, 2019; Borevi and Shakra, 2019). German law allows for the refusal of entry at the border to asylum seekers who have entered from a safe third country or for whose application another member state is responsible under the Dublin regulation (Hänsel, Hess and Kasperek, 2019). In **Austria**, 12,301 people were denied entry in 2016 (Josipovic and Reeger, 2019). While the **UK** has not transposed the relevant EU legislation, it operates a regime whereby admission to the territory is temporary – exemplified by the statuses of 'temporary leave' and 'immigration bail' – and does not imply a right to remain. In Poland and Hungary, stricter measures were introduced in 2015.

A further key area is the criminalisation of entry, since EU law, and in particular the facilitators package does not prohibit it. Entry is thus criminalised – designated as either an administrative or criminal offence – in all EU countries in this project. In **Hungary**, only entry through the



border closure – the fence constructed in 2015 – is a criminal offence. In terms of penalties, it carries only a fine in Austria and Italy, but in all other countries both a fine and/or a custodial sentence.

**Table 1: Penalties for irregular entry**

<b>Country</b>	<b>Fine</b>	<b>Custodial sentence</b>
Austria	€100 – €1,000	> 2 weeks
Germany	> €3000	> 3 years
Greece	€1500 minimum	< 3 months
Hungary	HUF 5,000 - HUF 150,000 (until 2015)	x
Italy	€5000 to €10000	x
Poland	Yes	> 3 years <sup>6</sup>
Sweden	Yes	> 1 year
UK	> £5000	> 2 years
Iraq	Yes*	> 3 years*
Lebanon	Yes*	x*
Turkey	Yes*	x*

Source: Library of Congress (2019) Criminalization of Illegal Entry Around the World, <https://www.loc.gov/law/help/illegal-entry/chart.php>

**Table 2: Facilitation of irregular entry**

<b>Country</b>	<b>Fine</b>	<b>Custodial sentence</b>
<b>Austria</b>	yes	1-10 years
<b>Germany</b>	yes	5 years
<b>Greece</b>	< €20000 euro €50,000 if financial gain	> 10 years < 10 min if financial gain
<b>Hungary</b>	5,000 up to HUF 150,000 (until 2015)	1-5 years if there is financial gain 2-8 years commercial scale
<b>Italy</b>	> €15000	1-5
<b>Poland</b>	?	6 months to 8 years
<b>Sweden</b>	?	2 years
<b>UK</b>	> £5000	> 14 years
<b>Iraq</b>	n/a	n/a
<b>Lebanon</b>	n/a	n/a
<b>Turkey</b>	yes	3-8 years

<sup>6</sup> If threat, violence or deception are used.

The facilitation of unauthorised entry is criminalised in all selected member states but domestic laws differ in what concerns the ‘appropriate sanctions’ stipulated by Council Directive 2002/90/EC. Only Germany requires the presence of a material or financial benefit for facilitation to be a punishable offence (Vosyliūtė and Conte, 2018; Carrera et. al., 2016, 2018). In the UK, the law designates seeking protection as a defence in the case of prosecution.

**Italy** and **Greece** have legal provisions exempting humanitarian actors from the scope of the Facilitators directive, while in **Poland** authorities may refrain from punishment in exceptional circumstances (European Migration Network, 2017). Although the extension of provisions on facilitation to civil actors is mostly a matter of implementation rather than law, **Hungary** explicitly criminalises civil sector organisations providing support with accessing the asylum procedure and humanitarian assistance (Gyollai and Korkut, 2019). In a related measure, in 2016 **Greece** introduced a legal requirement for the registration of NGOs (Carrera et. al., 2018).

All non-EU countries have frameworks regulating border management reflecting a similar architecture of entry conditions and border checks, such as determining conditions of entry and exit, the required ID documents, fixed border crossing points and the use of databases (Gökalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019; Warda et. al., 2019). Unauthorised entry is a criminal offence in **Lebanon**, carrying both administrative and criminal penalties (Jagarnathsingh, 2019). However, the main legal framework, the Law Regulating Entry, Stay and Exit of Foreigners dates back to 1962 and is lacking detailed provisions (ibid.). In **Iraq**, the Foreigners’ Residency Law No. 76 of 2017 and the Coalition Provisional Authority Order no 16 regulate conditions of entry and border checks. The Asayish – the authority of the Kurdistan region – has responsibility over border control in the Kurdish territory. Further, the EU-partnership and Cooperation Agreement refers to border management and control, as well as admission rules, as key areas of cooperation (Warda et. al., 2019). Persons seeking international protection need to apply before entry, to Iraqi diplomatic missions, or at the border. Their application must be examined and approved by the Ministry of the Interior, at the recommendation of the Permanent Committee for Refugee Affairs, before entry is granted. Until then, the applicant can be detained in police stations at the border for two months (Warda et. al., 2019).

Legal arrangements in **Turkey** are aligned to a large extent with the EU framework because of the accession and visa liberalisation processes, and include provisions for entry and exit, fingerprinting of asylum seekers at the border, the conduct of border checks. They also contain legislation on smuggling which is aligned with the provisions of the facilitators package, and in addition exempt humanitarian motivations from the provisions on smuggling (Gökalp Aras and Şahin Mencütek, 2019). Lebanon and Turkey have also ratified the UN Protocol against the Smuggling of Migrants by Land Sea and Air (Gökalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019). In what concerns the borders with Syria, both **Lebanon** and **Turkey** after years of a more or less ‘open door’-policy towards Syrian people fleeing the civil war, introduced reinforced border controls since 2015 (Gökalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019). In contrast, the Iraqi authorities, and in particular the Kurdish Regional Government (KRG) adopted a more *laissez faire* approach in allowing entry of Syrian refugees but mainly of Kurdish and Assyrian rather than Arab origin (Warda et. al., 2019).

Yet, arrangements at the Lebanese-Syrian border regarding at-the border checks were informed by the porosity of the borders in the area and cross border mobility patterns, mainly for labour. Mobility across the Lebanon-Syria border was regulated through bilateral treaties which allowed for an 'open door' policy for Syrians and Lebanese and facilitated the 'flow of cheap, 'cash in hand' labour from Syria into Lebanon' (Jagamathsingh, 2019). The porosity of the Lebanese-Syrian border was also exemplified by the cross-border movement of armed groups (ibid.). In a similar manner, the southern Turkish border with Syria has been characterised by patterns of cross border movements and close ties between communities on either side of the border (Gökalp Aras and Şahin Mencütek, 2019). Similarly, long-term transborder ties and activities across the Iraqi border, in particular among Kurdish populations in the region, facilitated the crossing into Iraq during the mass displacements of 2013/2014 (Warda et. al., 2019; see also Dionigi, 2019). This mobility regime came to an end with the introduction of border controls by Turkey and Lebanon in 2015, and the construction of a border wall by the former country.

### 3.1.2.1 Border surveillance

Border surveillance is of varying significance depending on the geographical position of the country. Countries with external borders such as Italy, Greece, Hungary and Poland have extensive practices of patrolling their sea and land borders using both conventional (e.g. police, army or border guard patrols) and technological means (e.g. thermal cameras). Frontex, the European Border and Coast Guard Agency, is involved in border surveillance operations in **Greece**, **Italy** and **Hungary** (Ilias et. al., 2019; Terlizzi, 2019; Gyollai and Korkut, 2019).

Sea border surveillance both in Italy and Greece, is intertwined with Sea Rescue Operations. Both countries have ratified international legal instruments such as the International convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue and the United Nations Convention on the Law of the Sea, although in Greece there is a stronger division between border surveillance and search and rescue (SAR) operations in law. In both countries, national authorities border management and sea rescue operations are supported by Frontex.

Countries that were on the routes of the 2015 movements intensified border surveillance measures. While **Greece** constructed a fence in a section of the Greek-Turkish land border in Greece in 2012,<sup>7</sup> before the 2015 developments, **Hungary** constructed a fence in the Serbian border in 2015 and **Austria** in the border with Slovenia in 2016. In **Hungary**, the 'border-hunter' unit, a paramilitary group, was established in 2015 with specific responsibilities for border surveillance and enforcing laws on unauthorised entry (Gyollai and Korkut, 2019). Similarly, a unit called PUMA was established in 2018 in **Austria** (Josipovic and Reeger, 2019).

Beyond the eight EU member states, **Turkey** has an extensive framework regulating border surveillance (Gökalp Aras and Şahin Mencütek, 2019). It also constructed a high-security wall at the Syrian border as part of an 'Integrated Border Security System' incorporating technological means of control such as fibre optic sensors and observation balloons. The Turkish coast guard is also assisted by Frontex as well as NATO forces. Operations, however, take place against a continuing dispute with Greece concerning the maritime border between the two countries. In **Iraq**, border surveillance operations – including fixed infrastructure and

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<sup>7</sup> Bulgaria a fence in a section of its land border with Turkey in 2014

patrolling of the border – are under the Ministry of the Interior insofar the land border is concerned, while the Asayish has responsibility over surveillance of the Kurdistan region. Border surveillance at sea is the responsibility of the Iraq Navy. Similarly the Lebanese Navy, assisted by the UNIFIL mission is responsible for border surveillance in **Lebanon**. Surveillance of the land border with Syrian is conducted by the Lebanese Armed Forces (LAF), while the Southern border with Israel is surveilled by both LAF and Hezbollah.

Treaties and agreements among neighbouring EU member states also have an impact on land border management practices. **Austria** signed treaties with **Italy** and **Hungary** allowing for police cooperation on border surveillance and policing (Josipovic and Reeger, 2019). It also has bilateral action plans related to migration control with 6 countries: Albania, Serbia, Bosnia and Herzegovina, Kosovo, Macedonia and Montenegro. Police treaties in **Germany** provide the basis for cooperation on border controls with Austria and Italy – e.g. a trilateral border guard unit controlling the ‘Brenner-route’ from Italy, via Austria towards Germany. Similarly, **Hungary** has a bilateral treaty with Slovakia which allows for joined patrols and ID checks, while within Visegrad group activities, Polish, Czech and Slovakian border guards have been deployed at the Hungarian-Serbian border in 2015 (Gyollai and Korkut, 2019).

### 3.1.3 Internal controls

#### 3.1.3.1 Conditions of Stay

In all EU member states in the scope of this report, the provisions of stay for refugees are in line with EU law – for example refugees generally have the right to obtain travel documents, status is not permanent and revocation of status generally reflects the provisions of the directive. Differences are observed in terms of the length of refugee status and subsidiary protection. Table 3 summarises the differences in the 8 EU member states represented in this report.

With the exception of the **UK**, which has not transposed Directive 2011/95/EU, most of the other countries tend to keep the minimum standards set by the Directive insofar the duration of the refugee status is concerned. In **Sweden**, a temporary change from permanent residence issued with protection status to a time-limited one of three years was introduced in response to the 2015 movements in 2017 but it has been extended to 2021 (Borevi and Shakra, 2019).

**Table 3: Duration of protection status**

<b>Country</b>	<b>Refugee status</b>	<b>Subsidiary protection</b>
Austria	3	1
Germany	3	1
Greece	3	3
Hungary	10	3
Italy	5	5
Poland	3	2
Sweden	3	1
UK	5	5
Iraq	n/a	n/a
Lebanon	n/a	n/a
Turkey	n/a	n/a

Source: ECRE (2016)

### 3.1.4 Detention and restrictions on freedom of movement

**Asylum seekers** are generally subject to a wide range of internal controls. All countries allow for the detention in accordance with the provisions of Directive 2013/32/EU. Time limits vary. In **Greece**, the law stipulates time limits of 45 days for reasons related to the examination of asylum applications, and three months if there are considerations related to public order or absconding. However, the law also allows for the extension of detention to 18 months. The detention of asylum seekers in the **UK** is allowed on grounds provided in national law which does not refer specifically to asylum seekers. In essence, detention is decided on a case by case basis on grounds stipulated in policy rather than law. There is no time limit for the detention of asylum seekers in the UK. In **Hungary**, following the establishment of the transit zone, asylum seekers can be detained indefinitely (Hungarian Helsinki Committee, 2018).

Similarly, all selected EU member states impose residence limitations and reporting obligations on asylum seekers. All selected EU member states allow for the authorities to designate the place of accommodation of asylum seekers. In the **UK**, under the dispersal system, asylum seekers must reside in cities and accommodation specified by the Home Office. The introduction of the 8km-rule in **Hungary** in 2016 and its extension to the whole country in 2017 provided for the 'escort of migrants' without status as well as asylum seekers back to the transit zone at the border (Gyollai and Korkut, 2019). In **Austria** and **Germany** residence and reporting obligations were tightened after 2015. In **Austria**, after a new law was introduced in 2017, asylum seekers who have committed criminal offences, are under criminal suspicion, or for reasons of 'public interest, public order or a fast processing of an application' can be ordered to stay in designated accommodation centres. Non-compliance carries fines of EUR 5,000 to EUR 15,000. **Germany**, one of the key destinations of the 2015 movements, similarly introduced legal amendments that considerably tightened accommodation and residency obligations and made violations of the residence obligation a reason for ceasing asylum procedures (Hänsel, Hess and Kasparek, 2019).

In **Greece**, the hotspot regime influences practices of detention and limitation of residence stay requirements are also shaped by the hotspot regime. In Greece, the law allows for a 3-day restriction of liberty within hotspots in order to complete registration and screening procedures. This can be extended by the manager of the hotspot to 25 days if the procedures are not completed. Furthermore, a geographical prohibition applies to the hotspots, meaning that applicants for international protection are obliged to stay in the island where the hotspot is located. Authorities can also place restrictions regarding the place of residence of asylum seekers outside the hotspot system in order to examine their asylum application or because of public order considerations. In contrast, migrants seeking international protections can be detained in hotspots in **Italy**, but there is no clear legal framework (Terlizzi, 2019).

Neither Lebanon or Iraq have ratified the United Nations Convention relating to the Status of Refugees, while Turkey has adopted it with a geographical limitation which dictates that only European asylum seekers are entitled to international protection in the sense of the Geneva convention (Gökalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019; Warda et. al., 2019). Non-European asylum seekers may receive a 'conditional refugee status', administered by the UNHCR, while Syrian refugees receive the status of 'temporary protection' (Gökalp Aras and Şahin Mencütek, 2019).

In **Iraq**, refugee status can be revoked by an order from the Ministry of the Interior on the grounds of security or the political interests of the state. In the absence of specific legal provisions in Iraqi law, the stay of applicants for international protection and refugees is regulated by the Foreigners' Residency Law No 76 of 2017. Refugees can be detained and deported for security reasons or breaching deportation orders for up to two months (Warda et. al., 2019). Staying in Iraq with an expired visa carries financial penalties (Warda et. al., 2019). Restrictions to the place of residence of non-nationals also apply. Further, public services are not provided to people with no valid identity documents (ibid.).

In **Lebanon**, a Memorandum of Understanding between the country's authorities and the UNHCR provides the legal basis for asylum seekers and refugees to stay in the country temporarily, although in reality, it is only applied to non-Palestinian and non-Syrian refugees (Jagarnathsingh, 2018, p.24). As domestic law only recognises persecution for political reasons, displaced populations in Lebanon – such as Syrians since 2011 – are not recognised as refugees by the Lebanese state but are registered with the UNHCR. Thus, protections against expulsion and detention arise from international human rights instruments which Lebanon has ratified, rather than from domestic law. At the same time, unauthorised stay and the use of forged documents, and staying in the country after a deportation order was issued are criminal offences (Jagarnathsingh, 2019). They carry both administrative and criminal sanctions, including a fine and up to three years' imprisonment, as well as deportation. Those who receive criminal sanctions can be detained after the criminal sentence is completed (ibid.). Lebanon is still following a 'no camp-policy', meaning that there are no obligations or restrictions where to live and stay but there is also no state administered humanitarian infrastructure.

Turkey has a more complex regime whereby conditions of stay depend on the specific protection status. Those with conditional refugee status have to reside in accommodation centres in 51 so called satellite cities until their applications for protection are finalised (Gökalp Aras and Şahin Mencütek, 2019). Once they are allocated to a city, they must transfer there within 15 days; if not, their application may be deemed withdrawn, which can result in deportation (Çetin et. al., 2018; Gökalp Aras and Şahin Mencütek, 2019). This status is not permanent but allows recipients to stay in Turkey until resettled by the UNHCR (Çetin et. al., 2018). Those with temporary status – Syrian refugees – have to reside in designated provinces rather than cities. For Syrian refugees the Turkish state as well as several humanitarian actors have established several camps, especially along the Syrian border.

#### 3.1.4.1 Criminalization of unauthorized stay

All selected EU member states as well as Turkey criminalise unauthorised stay by a fine, while in **UK, Germany, Sweden** and **Austria** the law also allows for custodial sentences. Austria introduced penalties from €5,000 to €15,000 or imprisonment of up to six weeks for staying in the country in violation entry ban or exclusion order (Heilemann, 2019). In all selected countries, those staying without legal status are subject to return procedures. However, in some countries the law allows for stay on humanitarian reasons (**Poland, Greece**) or in 'tolerated stay' status if deportation is not possible (**Poland, Austria, Germany**). There are different rights attached to these statuses. For example, those with a humanitarian permit in Poland can work and travel to other EU member states, while those on tolerated stay can work

but not travel (Szulecka, 2019). In contrast, the **UK**, under hostile environment policies, has developed a host of restrictive measures such as prohibitions to rent accommodation, have a driving license or open a bank account without legal status (Karamanidou, 2019). In some countries, changes to the legislation were introduced in response to the 2015 movements. **Greece**, for example, allowed for the employment of third country nationals without status. **Sweden**, in contrast, removed financial support and accommodation for those under return procedures (European Migration Network, 2017).

**Table 4: Criminalisation of Stay**

<b>Country</b>	<b>Fine</b>	<b>Custodial sentence</b>
<b>Austria</b>	500 - 15,000	> 6 weeks
<b>Germany</b>	yes	1 year
<b>Greece</b>	yes	no
<b>Hungary</b>	yes	N/A
<b>Italy</b>	yes	no
<b>Poland</b>	yes	N/A
<b>Sweden</b>	yes	> 1 year
<b>UK</b>	> £5000	> 6 months
<b>Iraq</b>	100,000 Iraqi Dinars for expired; and 10,000 per day after expiration of visa up to 5,000,000 Iraqi Dinars	n/a
<b>Lebanon</b>	Yes	Yes
<b>Turkey</b>	n/a	n/a

**Table 5: Facilitation of irregular stay**

<b>Country</b>	<b>Fine</b>	<b>Custodial sentence</b>
Austria	> 5000	> 1
Germany	yes	> 5 years
Greece	> 5000 < 10000 if financial motivation	> 1 year
Hungary	no	> 2 years
Italy	€15,500	> 4 years
Poland	?	3 months to 5 years
Sweden	yes	2-6 years
UK	Yes	> 14 years
Iraq	n/a	n/a
Lebanon	n/a	n/a
Turkey	n/a	n/a

Facilitation of stay, similarly to the facilitation of irregular entry is criminalised in all countries, and generally carries custodial sentences and/or fines. A financial or personal benefit motivation must be present in all selected countries (Carrera et. al., 2018; European Migration Network, 2017).

### 3.1.4.2 Internal controls and apprehensions

Measures concerning the control of migrant populations within the territory of the state – with the exception of police checks as stipulated by the SBC- are the prerogative of member states. They encompass a range of measures such as requirements to report to the police or other authorities, ID checks, and checks in workplaces.

In **Sweden**, the Police and the Migration Agency can ask third country nationals to provide information about their stay, which is enforceable by police action if the request is refused (Borevi and Shakra, 2019). While there is no obligation for third country nationals to carry passports or other ID documents with them, they must present them to the police if the latter conduct checks on their right to remain in the country (ibid.). In **Poland**, non-nationals are legally required to present documents allowing their stay in Poland and can be fined if they do not do so at the request of authorities (Szulecka, 2019). In **Italy**, by contrast, a person can refuse to show an ID card, although it is a criminal offence not to provide information on their identity (Terlizzi, 2019). Measures such as ID checks in public places or transport routes are applied in all selected countries. Under ‘hostile environment’ policies, the **UK** law also obliges public services – such as the NHS, local authorities and schools - to inform immigration enforcement agencies on the status of persons, including children (Karamanidou, 2019). Similarly, in **Austria** irregular migrants have no option but to register with local authorities as landlords and schools often request proof of residence (Josipovic and Reeger, 2019).

Employment checks are regulated by the Employers Sanction Directive which has been adopted by all EU member states except the UK. All EU countries in the scope of this report, including the UK, have legal regimes in place that target the employment sector as a means to control unauthorised migration. In most countries, measures related to employment involve workplace checks and raids and target mainly employers (Karamanidou, 2019; Szulecka, 2019; Borevi and Shakra, 2019). While these measures target migration, they are often the responsibility of ministries overseeing employment, for example in **Italy**, **Poland** and **Greece** (Terlizzi, 2019; Szulecka, 2019; Ilias et. al., 2019). Another set of measures concerns the use of databases for monitoring the presence of third country nationals and enforcing internal apprehension measures. With the exception of the UK, which only has access to the SIS II (but only in relation to criminal offenses) and Eurodac databases, all other EU countries have access to all databases. However, in addition to these, domestic police databases, such as the Central Register of Foreign Nationals in Germany, the Central Register of Residents in Austria or Police Online in Greece do also exist.

There are equally expansive regimes for internal control measures in the three non-member state countries. In **Iraq**, the architecture of internal controls is largely informed by legacies of conflict and the security situation, and includes reporting obligations to the Ministry of the Interior for visa holders, checkpoints and identity checks at the entrance and exit points of major cities, and informing the authorities of changes of address (Warda et. al., 2019). Similarly, following the assassination of Prime minister Hariri in 2005, security arrangements in **Lebanon** involve an array of measures of surveillance, constraints (such as roadblocks and profiling of pedestrians and vehicles), and checkpoints, including at the Palestinian refugee camps outside Beirut. While these measures are aimed at the wider population, they mainly affect migrants with no legal status and refugees (Jagarnathsingh, 2019). In **Turkey**, recipients of conditional refugee status and temporary protection must report to the authorities at regular



intervals, inform them of changes of address, and in the case of the latter group changes of employment and in personal circumstances (e.g. marriage). Non-compliance with reporting obligations can lead to withdrawal of protection statuses. Both groups have to obtain travel permits in order to leave their city or province of residence (Gökalp Aras and Şahin Mencütek, 2019).

### 3.1.5 Return and Detention

All EU countries except for the UK have transposed the Returns directive and all are bound by the Dublin regulation. The legal framework of the selected member states is thus largely europeanised although several member states, for example, use the derogation powers stipulated in Article 2 (2) of the Return directive. **Greece** and **Hungary** exclude third country nationals apprehended and refused entry under article 13 of the SBC at external border areas from the remit of the Returns Directive, applying instead domestic legal provisions on deportation. The same exception applies in Germany and Austria, although the two countries do not have external borders apart from international airports. **Sweden**, **Germany** and **Austria** exclude from the provisions of the directive those subject to a refusal of entry; **Austria** and **Sweden** those subject to return as part of criminal law sanctions, and **Sweden** and **Germany** those subject to extradition procedures. Return decisions can be issued even if the authorities do not know the whereabouts of the person subject to return (**Austria**, **Germany**, **Sweden**, **UK**) or if the person subject to return procedures does not have the necessary documents (**Austria**, **Germany**, **Hungary**, **Italy**, **Sweden**, **UK**). Other provisions, in relation to the issuing of return orders, appeal mechanisms, detention entry bans and voluntary return have been transposed in a manner reflecting the provisions of the directive. All countries have voluntary returns schemes.

Nevertheless, there is considerable divergence in other areas. All selected countries allow for detention not only on the grounds prescribed by the Return directive – the risk of absconding and in order to prepare the removal, especially when a person does not cooperate – but also for a wide range of other reasons. For example, **Greece**, **Germany**, **Hungary**, **Italy**, **Poland** and **Sweden** all allow for pre-return detention on the grounds of national security and/or criminal offences; **Austria**, **Poland** and **Greece** for non-compliance with voluntary departure; **Hungary** for violations of the code of conduct in detention centres and for procedural delays in enforcing the return decision. In the 2018 reform of the Return Directive, several of these grounds, which reflect the European Commission's 2017 Action Plan and Recommendations on returns were included in the proposed text. In terms of the length of detention, four selected countries (**Austria**, **Germany**, **Greece**, **Poland**) allow for the maximum time limit for detention of 18 months, two countries (**Hungary** and **Sweden**) for 12 months. In **Italy** the maximum time limit for detention was 3 months until 2018, then increased to 6 months, as suggested in the Commission's 2017 recommendations. The UK, in contrast, has no time limit for detention. The length of entry bans also varies among countries, and exceeds the 5 years suggested in the Directive, especially in cases of serious criminal offences.

Return is an area where legislative change – as well as developments in implementation – can be observed especially since 2015. **Germany** since 2015 reduced the time limit for suspension of deportation, prohibited the notification of deportation, tightened provisions for expulsion of migrants with a criminal record, limited the grounds for suspending a removal due to health concerns, and expanded provisions for pre-removal detention both in custody

facilities and accommodation centres (Hänsel, Hess and Kasperek, 2019). In 2017, yet another law introduced an array of measures aimed at facilitating deportation such as expanding the grounds for detention for the purpose of return, enhancing reporting measures and allowing for the confiscation of documents. **Sweden** amended its law on return in 2017, which expanded police powers on deciding the detention and return of minors (Borevi and Shakra, 2019). **Austria** extended the time limit of detention to 18 months in 2017, while **Italy** from three to six months in 2018. In **Hungary**, following changes in the criminal law in 2015, migrants can be deported if they enter through the border closure or damage the border fence (Gyollai and Korkut, 2019) (European Commission 2017). In what concerns returns under the Dublin Regulation, we should note the emergence of bilateral agreements outside the scope of the regulation itself.

**Table 6: maximum length of re-entry bans in years**

<b>Country</b>	<b>Maximum length</b>
<b>Austria</b>	Indefinite
<b>Germany</b>	10
<b>Greece</b>	10
<b>Hungary</b>	10
<b>Italy</b>	5
<b>Poland</b>	5
<b>Sweden</b>	5
<b>UK</b>	10
<b>Iraq</b>	n/a
<b>Lebanon</b>	n/a
<b>Turkey</b>	n/a

The legal frameworks governing return and detention for return in the three non-member states present both similarities and differences. In **Lebanon**, those imprisoned for offenses related to forged documents and authorisation are liable to deportation after the completion of their sentences. However, they may be detained again in practice, and the legal grounds for detention on the basis of deportation in Lebanon are ‘unclear and inadequate’ (Global Detention Project cited in Jagannathsingh, 2019) in particular in what concerns the distinction between criminal and administrative detention. There is no time limit for detention. Further, the authorities can deport third country nationals who are deemed a threat to public security. As mentioned before, recognised refugees can be deported from **Iraq** after their status is revoked. The law provides for the expulsion of persons with no legal status, for the imposition of restrictions in the place of residence with a view to deportation, and the deportation of family members. However, unlike in most EU member states bound by the return directive, there are no rights of appeal against deportation. Deported persons are prohibited from re-entering Iraq without authorisation from the ministry of the Interior (Warda et. al., 2019).

In **Turkey**, persons subject to return include those entering without authorisation and who did not apply for protection, persons with no legal status, attempting to leave Turkey in an unauthorised manner and those convicted for terrorist or criminal offences. The legal framework for return is largely aligned with that of the EU. It stipulates, for example, the

issuance of return decisions, allows for a period of voluntary departure, safeguards against *refoulement* and rights to appeal against return decisions (except for those with criminal or terrorism convictions). Detention of up to 12 months is allowed on grounds as those in the Returns directive as well as for public order, public security or public health reasons, and can also be appealed. Provision is also made for the detention of families and unaccompanied minors in separate areas (Gökalp Aras and Şahin Mencütek, 2019).

### 3.1.6 Readmission agreements

In addition to the countries with which EU has readmission agreements, several of the selected countries have entered bilateral agreements which are significant in the context of the migratory movements that RESPOND focuses on. **Greece** signed a bilateral agreement with Turkey in 2002, which provided the basis for returns under the EU-Turkey Statement but was suspended by the Turkish government in 2018 (Gökalp Aras and Şahin Mencütek, 2019; Ilias et. al., 2019). **Sweden** entered a bilateral memorandum with Afghanistan. The **UK** has entered Memoranda of Understanding with six countries outside the EU list: Erupt, Libya, Jordan, Lebanon, Ethiopia, Morocco and Afghanistan (Karamanidou, 2019). In 2017, **Italy** introduced a law allowing for readmission agreements with third countries for the purpose of return (European Migration Network, 2017).

All three non-member states have agreements with the EU concerning the readmission of their own nationals. The EU-Partnership and Cooperation Agreement with **Iraq** contains clauses on the readmission of Iraqi nationals 'without further formalities' while it also contains a clause on a potential agreement for the readmission of third country nationals (Warda et. al., 2019). A similar provision is included in the **EU-Lebanon** association agreement. Lebanon further has readmission agreements with Romania, Bulgaria, Cyprus and Switzerland. The **EU-Turkey** readmission agreement signed in 2013 and entered into force in 2016 provided for the return of Turkish citizens as well as third country nationals, although the latter provision was not implemented. The 2016 EU-Turkey statement, although not a legal instrument allowed for returns from Greece to Turkey. However, its legal basis was the 2002 Readmission agreement between Greece and Turkey, which as mentioned above has been suspended since 2018.

## 3.2 Implementation: Trends and Dynamics

Our second dimension of analysis is implementation, i.e. the putting into practice of legislation. The forced migrations of 2015 have led to wide-ranging policy initiatives on the level of the European Union, as we have already noted, described and analysed in our previous report (Karamanidou and Kasperek, 2018). This report complements that particular analysis for the level of the EU with a comparative perspective on the policy responses of the 11 RESPOND countries as differently 'affected' by the migrations of 2015. To this end, we begin by highlighting seven trends that are observable on the national level. These trends obviously are not generalisable for all countries analysed in this report, but they apply to a number of cases.

### 3.2.1. Repeated Introductions of Temporary Schengen-Internal Border Controls

One of the most obvious indication for a return to national policies on border management and migration control are the re-introduction of internal border controls in the Schengen area in autumn 2017. While in total, nine Schengen states have made use of the provisions in the Schengen Borders Code (Austria, Belgium, Denmark, France, Germany, Malta, Norway, Slovenia and Sweden), due to the scope of this report we will focus on **Sweden**, **Germany**, and **Austria**.

These three countries, whose borders as already noted are largely Schengen-internal borders, have opted to reintroduce border controls in autumn 2015, and have since then extended them repeatedly. In November 2015, **Sweden** introduced border controls at its territorial border with Denmark under Art. 25 SBC (Borevi and Shakra, 2019, p.7). Notably, these measures were combined with national legislation in order to allow for and mandate comprehensive ID-checks in these border controls (ibid.). These comprehensive checks were however described as 'special measures in the event of serious danger to public order or internal security' (Borevi and Shakra, 2019, p.7), thus specifically echoing the spirit of Art. 25 SBC. In May 2017, this practice was discontinued.

**Germany** introduced temporary border controls at three highways crossing from **Austria** into Bavaria in September 2015, and has since upheld them. Furthermore, previously existing checks in international trains from **Austria** and in areas near the border have been re-enforced. However, it has often been noted that the introduction of border controls at only three sites left the vast majority of border crossing from **Austria** unpoliced (Hänsel, Hess and Kasperek, 2019). In 2018, these border controls became a controversial issue again not due because of their continued existence, but due to a proposal of the Federal Ministry of Interior to refuse entry to persons making an asylum claim at the border if another state was responsible for the processing of the asylum application under the Dublin regulation. In the end, this practice was implemented under bilateral working arrangements with Portugal, Spain, **Greece** and **Italy** (conclusion still pending - see below) (Hänsel, Hess and Kasperek, 2019). This controversy highlights the transformation of rationales of border controls in **Germany**, from regulating access to national territory to a mechanism directed against secondary movements of asylum seekers.

Also in September 2015, the **Austrian** government introduced systematic internal border controls at two major border crossing points towards Slovenia (BCP Spielfeld) and **Hungary** (BCP Nickelsdorf), at the time extensively transited by asylum seekers travelling the Balkan route (Josipovic and Reeger, 2019, p.11f.). **Austria** also referred to Art. 25 SBC. The report on **Austria** notes that an introduction of border controls at the BCP Brennero towards **Italy** was considered and prepared, but not implemented due to protest by the Italian government.

At the time of writing of this report, all three instances of re-introduced internal border controls are ongoing. All three country reports state that the border controls are considered largely symbolic and see their role as a function in public discourse (Josipovic and Reeger, 2019, p.25). However, the selective nature of these border controls suggests that the underlying rationality is not necessarily rooted in a reversal of the Schengen process, i.e. a general and all-encompassing re-installation of border control measures along the entire territorial borders

of these states. Rather, they constitute specific sites of increased border control and surveillance that are situated not along a horizontal territorial border, but along a vertical, perpendicular geography of routes of migration. In this vein, the control objective of these border controls are not necessarily individual migrants or asylum seekers, but rather the route itself, whose re-emergence on a comparable scale to 2015 is thus impeded. Fittingly, all three countries now cite the prevention of secondary movement of asylum seekers in the EU as core rationales for the prolongation of Schengen-internal border controls.

### 3.2.2. Securitisation - Tightening of Border Controls

Eight of the eleven country reports describe a more general trend of a securitisation and the tightening of border controls. With securitisation we refer to a process by which certain phenomena and policy fields are increasingly and more dominantly discussed and defined by drawing on in/security and risk arguments that transforms leading rationales, actors and practices of a given policy field (Bigo 2002). Since 2015 we see in some countries, that this goes hand in glove with a deployment of military, and para-military units to the border, a trend that will be separately examined.

Prior to 2015, **Turkey**'s policy towards refugees from the Syrian civil war was characterised by a humanitarian open-door-policy. In 2015 – this is the main trend described by the country report – a reversal of this policy came into effect, driven by a logic of securitisation (Gökalp Aras and Şahin Mencütek, 2019, p.9). Already in February 2015, the Turkish military carried out its first incursion into Syrian territory, followed by larger operations in August 2016 (lasting until March 2017), in January 2018 (Gökalp Aras and Şahin Mencütek, 2019., p.20) and October 2019. The incursions were part of a larger border security strategy 'to prevent infiltration by 'militias and terrorist groups'' (Gökalp Aras and Şahin Mencütek, 2019, p.20.) and included the construction of the *security wall* at the border with Syria which began in 2016 (Gökalp Aras and Şahin Mencütek, 2019, p.20.). The country report notes that these policy reversals were understood as issues of national security, and came into effect independently from EU interests (Gökalp Aras and Şahin Mencütek, 2019, p.20).

However, concerning the Western (maritime) border with Greece, the report notes an 'intensification of the collaboration between the EU and **Turkey**' in 2015 (Gökalp Aras and Şahin Mencütek, 2019, p.20), leading to increased border surveillance in the Aegean through the *Joint Action Plan* (JAP) with the EU of November 29, 2015 (Gökalp Aras and Şahin Mencütek, 2019, p.21) and later through the EU-Turkey-Statement of March 2016. Based on interviews, the report concludes that both for entry as well as exit points of the Turkish border, increased securitisation and increased border control activities can be observed (Gökalp Aras and Şahin Mencütek, 2019, p.56).

For the case of **Lebanon**, the report describes a long-standing open border policy with Syria dating back to the 1990s, which came to an end in October 2014 and was fully reversed in January 2015 (Jagarnathsingh, 2019, p.16). While the order of the Lebanese Council of Ministers largely impacted residency rights of Syrian refugees, it also led to increased border controls and refusal of entries at official border crossing points (Jagarnathsingh, 2019, p.28). Not surprisingly, the contemporary specific security measures effected at **Lebanon**'s border with Syria mirror the dynamics of the Syrian civil war (Jagarnathsingh, 2019, p.43). The same applies to **Iraq**, where the report notes that 'the perception of migration is mostly focussed on threats to security driven by the fact that **Iraq** has been a target for insurgencies and extremists

since 2003' (Warda *et. al.*, 2019, p.22) and extensive efforts have been undertaken to introduce biometric technology for the purpose of border controls (Warda *et. al.*, 2019, p.24).

For the European Union, **Hungary** constitutes the most clear-cut example of the securitisation of borders and the tightening of border controls. Based on a political discourse 'overwhelmed by security-focussed narratives [...], the border control regime has been significantly expanded since 2015 coupled with an extensive deployment of policy and military personnel' (Gyollai and Korkut, 2019, p.8). The report furthermore concludes that protection needs are summarily discarded, with the sole aim of Hungarian border management and migration control practices being the prevention of irregular entry into the territory. The measures employed include the construction of a fence at the border with Serbia, as well as with Croatia (Gyollai and Korkut, 2019, p.18f.), the creation of new border units (Gyollai and Korkut, 2019, p.19), legislative changes protecting the very border infrastructure (Gyollai and Korkut, 2019, p.19), and the extension of apprehension practices aimed at removal to the entire territory (Gyollai and Korkut, 2019, p.22).

Such policies aiming at tightening border controls under a logic of securitisation can also be observed in other EU member states, albeit not as drastic as in the Hungarian case. The re-introduction of border controls by **Germany**, **Austria** and **Sweden** detailed in the previous section certainly falls into this category. **Austria** notable also introduced harsher punishment for acts of irregular entry (Josipovic and Reeger, 2019, p.21), as well as for facilitating irregular entry (Josipovic and Reeger, 2019, p.20) while **Germany** sought to prevent the entry of asylum seekers with a very specific interpretation of the Dublin regulation.

For **Poland**, the report notes that even though the migrations of 2015 was 'not directly experienced by **Poland**, it became the point of reference for its law proposals and changes in practices aimed at restricting border control' (Szulecka, 2019, p.15). while new anti-terrorism legislation introduced in 2016 also contained provisions concerning foreigners (Szulecka, 2019, p.30). A similar assessment applies to the **UK**, where border controls based on pre-entry measures such as data collection and a draconian visa regime are relied on heavily (Karamanidou, 2019, p.7) and where anti-terrorism legislation grants extensive powers to 'stop, detain, search and interview' persons at ports of entry (Karamanidou, 2019, p.19).

For the case of **Italy**, the report notes that securitisation has always been central to border management and migration control efforts, which translate into an extensive externalisation effort in order to limit cross border movements of migrants (Terlizzi, 2019, p.8). This strategy has recently been extended to weaken possible channels of even reaching Italian territory, leaving NGOs to facilitate access to persons in distress at sea, and even severely criminalising such humanitarian efforts (Terlizzi, 2019, p.39). Increased border controls in the North have also been noted (Terlizzi, 2019, p.32).

Securitisation and the tightening of border controls are thus a generalisable trend across all country reports examined here. While the result in itself is not necessarily surprising, as we discuss in the next section, it is accompanied by an increase in the capabilities of internal control regimes.

### 3.2.3. Intensification of Internal Controls, Detention and Return

As evidenced by the Hungarian case, border controls and internal controls, the latter usually aimed at apprehension and facilitation of removal or return of third-country nationals, are considered complementary responses to migration. This can be generalised to all countries in the scope of this report. Particularly insightful is an assessment from the **UK** report concerning the *hostile environment* policy of the UK government, i.e.

a set of measures that were introduced since 2012 in order to create, in the words of the then Home Secretary, a 'hostile environment' for migrants without legal status which would facilitate their detention and removal. It has entailed measures such as intensified legal status checks, employment checks and raids, curtailment of access to healthcare, accommodation, bank accounts, and driving licenses, and obligations of employers, landlords and public bodies to inform immigration authorities. (Karamanidou, 2019, p.9 fn 1)

The report continues to note that 'the 'hostile environment' policy represents a shift towards targeting unauthorised stay rather than entry' (Karamanidou, 2019, p.11). Generally, this means that immigration officers have 'wide-ranging powers to search and arrest persons suspected for irregular stay, and to enter and search premises to this aim' (Karamanidou, 2019, p.25). Furthermore, the employment sector is considered a 'key area for internal control and apprehension measures' (Karamanidou, 2019, p.26), while data generated through pre-entry and at-the-border measures is additionally used to identify migrants without legal status of residence (Karamanidou, 2019, p.26).

This approach also applies, with varying degrees, to the other countries examined in this report. The authors of the report on **Sweden** summarise the two main trends as the introduction of a selective control practice at the border, as well as legislative measures to limit the access to permanent residence permits for asylum seekers. While the former, especially its combination with comprehensive ID-checks, is considered temporary and with a reservation for periods of crisis, the replacement of permanent residence permits with temporary title of sojourn has a much more long-lasting effect on the refugee population in **Sweden**. The report thus concludes that

rules regarding the granting of residence status constitute a crucial part of a state's immigration control and border management policies, with a potentially important impact both on the numbers and the character of those immigrating to the country. (Borevi and Shakra, 2019, p.12)

The report further states that internal control measures concerning foreigners was considered an essential element of migration management on behalf of the Swedish government, which in 2017 proposed an expansion of workplace inspections to that effect (Borevi and Shakra, 2019, p.26f.) Concerning return of migrants and refugees without a permit to sojourn, the report finds a tentative increase in return cases (Borevi and Shakra, 2019, p.41), although efforts at strengthening return procedures predate the year 2015, evidenced by the so called REVA-project aimed at boosting the effectiveness of enforcement of deportations between 2012 and 2013 (Borevi and Shakra, 2019, p.39).

Similar developments can be sketched out in the German case. The bulk of legislative and policy changes related to migration and asylum are concerned with third-country nationals on

the territory of the German state, and not their entry into it. Specifically, through several legislative acts after 2015, the German state introduced control measures on asylum seekers, such as the obligation to remain in first reception centres for prolonged period of times, the increase of rhythm in which specific legal titles have to be renewed, replacement of social benefits paid out in cash through benefits in kind, accelerated asylum procedures for cases considered unjustified or with a small probability of success, re-introduction of residency obligations, and removal of obstacles to deportation, amongst others (Hänsel, Hess and Kasperek, 2019, p.14ff.). While these measures mostly affected all asylum seekers across the board, the introduction of the distinction between asylum seekers who have a high or a low perspective or probability of obtaining a residence permit through the asylum system (based on their nationality) (Hänsel, Hess and Kasperek, 2019, p.14) led to differentiated treatment of these groups of persons. Those with a high probability were often exempted from the new measures. While these legislative acts had a sharp impact on all areas of the asylum system, a specifically strong focus on extending pre-removal detention, streamlining return procedures and increasing effective returns can be observed for **Germany** (Hänsel, Hess and Kasperek, 2019, p.47).

These findings similarly apply to **Austria**. While the introduction of a unilateral annual quota for asylum applications (Josipovic and Reeger, 2019, p.24f.) may still be characterised as a measure aimed at reducing entry into the Austrian territory, other initiatives after 2015 fall squarely into a rationale of increased internal control. Amongst these are the introduction of new grounds for administrative apprehension (Josipovic and Reeger, 2019, pp.8, 30), extended periods of repulsion (Josipovic and Reeger, 2019, p.21) as well as extended capacities of establishing a person's identity (Josipovic and Reeger, 2019, p.21). Furthermore, the introduction of detention for asylum seekers deemed 'dangerous' is also planned by the government (Josipovic and Reeger, 2019, p.13). The report notes that forced returns have increased already since 2014 (Josipovic and Reeger, 2019, p.15), the extension of the maximum allowed detention period for removal has been increased from six to 18 months (Josipovic and Reeger, 2019, p.29), and return centres for rejected asylum seekers have been introduced (Josipovic and Reeger, 2019, p.15). **Austria** is also participating in Joint Return Operations organised by Frontex (Josipovic and Reeger, 2019, p.35).

For **Poland**, the author of the respective country report notes a political emphasis on restrictive measures that include a focus on internal control mechanisms and enforcement of return. The author specifically notes how the assessment of the risk that an asylum seeker may abscond by the Border Guard leads to an increase in detention during the asylum process (Szulecka, 2019, p.36), while she concludes that the general trend in **Poland** seems to be the inclusion of ever more spheres of social or economic life into the radius of control (Szulecka, 2019., p.69).

**Hungary** introduced the so called '8km-rule' in 2016, providing legal grounds for the apprehension and 'escorting' of irregular migrants to the border with Serbia and their subsequent expulsion (Gyollai and Korkut, 2019, p.22). The report qualifies these expulsions as factual pushbacks, the rationale being that under Hungary's asylum law, asylum applications may only be lodged in two transit zones. Due to a state of crisis declared in 2015 (and upheld since), the 8km-rule has been extended to the entire territory of Hungary (Gyollai and Korkut, 2019, p.22). Coupled with a rigid criminalisation of 'activities aiming to facilitate the initiation of asylum procedures [sic!]' on behalf of individuals who are not exposed to



persecution in their country of origin or in the transit countries they travelled through before arriving to Hungary' (Gyollai and Korkut, 2019, p.21), both the right to merely file for asylum as well as necessary civil society support for exercising this right have been forcibly suspended in lieu of strict control measures.

Both **Italy** and **Greece** constitute outliers in the practices sketched out so far in that they have implemented such measures even before 2015. This fact is not surprising since migration towards Europe had already started to increase prior to 2015 and was thus experienced by those two states. While the Italian report notes an increase of internal controls in the North of **Italy** as well as renewed attempts to enforce deportations more stringently, the Greek report notes re-occurring sweep operations of the Greek police targeting migrants without residence permits, most notably the operation Xenios Zeus of 2012, which raised the frequency of such raids (Ilias et. al., 2019, p.37). The use of geographical restrictions for asylum seekers in the hotspot centres can be characterised as an additional internal control measure (Ilias et. al., 2019, p.11). Through the EU-Turkey-statement and the implied re-activation of both the Greek-Turkish readmission protocol of 2002 and the EU-Turkey readmission agreement of 2013, the Greek state has sought to effect more expulsions of rejected asylum seekers, although not to their countries of origin but rather to neighbouring Turkey.

In the case of **Turkey**, the introduction of the *Temporary Protection Regime* (Gökalp Aras and Şahin Mencütek, 2019, p.34) for Syrian refugees in 2015 can be characterised as an attempt to exert stronger control over settled migrants, while the report more generally notes an increase of internal control measures (Gökalp Aras and Şahin Mencütek, 2019, p.47) and renewed efforts at expelling Syrian refugees which are intrinsically connected with military operations in Northern Syria.

In the case of **Lebanon**, the author notes that the internal control regime and related practices such as checkpoints have always been stronger than measures of border control and surveillance (Jagarnathsingh, 2019, p.19ff.), although these practices have to be understood in a larger context of security reinforcement irrespective of migration policy. Similarly, the report on **Iraq** notes the prevalence of checkpoints at entry/exit-points of cities (Warda et. al., 2019, p.20), affecting especially migrants, but which as a practice may not be attributed to migration control efforts solely, but also need to be evaluated within the context of fragile internal security in **Iraq**.

### 3.2.4. Actors and Centralisation

In this subsection, we are assessing organisational trends in national border management and migration control. We will highlight new institutions and actors that were created post-2015, and assess if the internal cooperation between (state) actors has changed on the national level. Military actors as well as bi- or multilateral cooperation will be discussed later.

Starting with **Lebanon**, the report does not indicate the creation of new bodies with migration management or control competences. Rather, existing institutions were tasked. As already noted, the report on **Lebanon** assesses the general security apparatus as the outcome of a 'complex hybridisation' (Jagarnathsingh, 2019, p.22) between a variety of actors – state and non-state actors alike –, and indicates that the resulting 'surveillance assemblage' (Jagarnathsingh, 2019, p.24) is characterised by the interplay, interdependence and

competition between security actors. It furthermore notes that the coordination both within individual as well as between different actors is limited (Jagarnathsingh, 2019, p.40f.).

For **Iraq**, the country report describes the 2016 creation of the Border Crossings Commission (BCC) as an 'independent commission responsible for improving the quality of services provided at border crossings through coordination among all ministries and entities' (Warda et. al., 2019, p.15). Bodies to be coordinated involve a plethora of ministries – most noteworthy the Ministry of Interior – as well as the intelligence service. It is directly linked with the Prime Minister and manages border crossing points infrastructure (Warda et. al., 2019, p.23). However, the report also notes that 'the lack of [a] clear legal and regulatory framework in the public domain is a serious problem' (Warda et. al., 2019, p.24), especially for those bodies tasked with the implementation and enforcement of legal provisions. This problem is further compounded by the existence of a multiplicity of actors involved, many of which are part of the Ministry of Interior (Warda et. al., 2019, p.25). Clearly, the creation of the BCC is an attempt at improved coordination of these bodies.

In **Turkey**, attempts to reorganise state institutions tasked with border management and migration control have begun much earlier than 2015, a development which can be attributed to the EU accession process and its aim to create compatible institutions. The country reports' section on actors mentions over 20 actors involved, of which principle coordination roles belong to such different kind of institutions such as the Turkish Armed Forces, the Ministry of the Interior with its sub-bodies Gendarmerie, Coast Guard, Directorate General of Security, Department of Border Management and the Directorate General of Migration, as well as the Ministry of Foreign Affairs (Gökalp Aras and Şahin Mencütek, 2019, p.48). Furthermore, there are more civilian bodies such as the Directorate General of Migration Management (Gökalp Aras and Şahin Mencütek, 2019, p.50) established in 2013 and international organizations like the UNHCR, also tasked with coordinating roles. Many bodies have undergone transformations in name and role over the last two decades (Gökalp Aras and Şahin Mencütek, 2019, p.51). Given Turkey's recent constitutional pivot to a presidential system and the publicly visible role that President Erdoğan has taken on concerning migration policies, one must assume that the ultimate coordination of border and migration policies lies with the upper echelons of the Turkish executive. It is however unclear if this constitutes a decisive change to prior arrangements.

For the cases of EU member states, **Greece** is the country that undertook the most drastic efforts (at least on paper) to reorganise its institutions tasked with border management and migration control. Again, these efforts date back much further than 2015, and have their origin in the europeanisation of migration and border policies, albeit in a delayed manner. The pivotal year appears to be 2011, when the entire asylum system was reorganised and both the Greek Asylum Service as well as the First Reception Service was created (Ilias et. al., 2019, p.7) and an *Integrated Border Management Program for Combating Illegal Immigration* was adopted (Ilias et. al., 2019, p.10). However, the latter rather saw the intensification of control activities by existing bodies, increased cooperation with EU actors such as Frontex, but no decisive reorganisation of ministerial competences. Only in 2014, the National Coordination Centre for Border Control, Immigration and Asylum was created in order to provide the National Border Surveillance System as the national counterpart of EUROSUR and to facilitate information exchange between agencies tasked with migration and asylum (Ilias et. al., 2019, p.24). Only in January 2015, an alternate Ministry of Migration under the Ministry of Interior (a more

administrative ministry and thus not comparable with other national MOIs) was established, even though it remained large decoupled from security actors such as the Greek Police, Greek Border Guard (both under the de facto Ministry of Interior called Ministry of Citizen Protection) and the Greek Coast Guard (under the ministry of merchant marine). Notably, the adoption of the hotspot approach in **Greece** did not coincide with any reorganisation or creation of actors.

For **Italy**, the report notes a veritable plethora of actors (Terlizzi, 2019, p.28ff.), whose origins must be sought for one in the existence of several police bodies with at times overlapping jurisdictions, as well as the federal structure of the Italian state. However, no indication of a reorganisation, creation of coordination bodies or centralisation of competences is given in the report.

Much differently, the response of the **Austrian** state to the migrations of 2015 saw not only the creation of a new specialised border police unit called PUMA (Josipovic and Reeger, 2019, p.12), but also the establishment of a new directorate (Directorate V Aliens Division) in the Ministry of Interior, ‘tying together the subjects of ‘citizenship and residence’, ‘borders and aliens police’, as well as ‘asylum and return’ (Josipovic and Reeger, 2019, p.15). However, the report offers no evidence for increased inter-ministerial coordination.

Both **Germany** and **Sweden** did not respond with decisive organisational measures. The report for **Sweden** does however mention that in 2016, a Swedish national strategy for integrated border management was established, bringing together police, national migration agency, different maritime agencies, customs and the Swedish security service (Borevi and Shakra, 2019, p.25). Given the criticism **Sweden** received through the Schengen evaluation mechanism in 2018, inter-actor coordination seems insufficient (Borevi and Shakra, 2019, p.36). For **Germany**, the creation of the Bavarian Border Police in 2017 is noteworthy, although this new institution has been widely regarded as a mere publicity stunt since the federal structure of **Germany** does not allow for the transfer of executive border control competences to such regional bodies.

**Hungary** again falls squarely into a different category concerning actors and their coordination. Already in 2016, the government recruited 3.000 ‘border hunters’ in order to offset the capacity shortages of the national police (Gyollai and Korkut, 2019, p.19). They were integrated into the Riot Police Border Policing Directorate, itself only established in 2015 (Gyollai and Korkut, 2019, pp.19, 34). Coordination between the army and police in matters of border control has been facilitated through a 2015 joint ministerial order (Gyollai and Korkut, 2019, p.37f.), and a national coordination centre at the National Police Headquarters acts as the national counterpart for Eurosur (Gyollai and Korkut, 2019, p.17). At the same time, NGOs as non-state actors have been largely excluded.

Both the **UK** and **Poland** as countries not directly affected by migrations of 2015 saw little organisational change. The UK’s border management and migration control system is – as previously stated – characterised by a high level of complexity, which extends to the quantity of actors involved, since 2016 also tasking public bodies, such as the Department of Education and its agencies as well as the National Health Service to cooperation with the Home Office in matters of migration control (Karamanidou, 2019, p.12). As for **Poland**, 2012 saw the creation of an inter-ministerial task force to set migration policy (Szulecka, 2019, p.15), in 2014, the competences of the Border Guard in the execution of migration-related sanctions were strengthened (Szulecka, 2019, p.23), while coordination amongst governmental bodies seems to be without serious shortcomings (Szulecka, 2019, p.67).

### 3.2.4.1. Increased Involvement of Military Actors

That the armed forces play an increasingly important role in Turkish border management and migration control has already been noted in the preceding subsection. Still, the repeated incursions of the Turkish military into Northern Syria between 2015 and 2019 have been explicitly justified with reference to migration management, i.e. the planned repatriation of up to three million Syrian refugees from **Turkey** to purportedly safe zones in Northern Syria to be created through the military intervention (Gökalp Aras and Şahin Mencütek, 2019, p.20). Furthermore, the authors of the report note a specific 'military-humanitarian nexus' (Gökalp Aras and Şahin Mencütek, 2019, p.55), quoting President Erdoğan in 2018 as seeing border security and the expansion of military operations beyond **Turkey's** borders as intrinsically linked (Gökalp Aras and Şahin Mencütek, 2019, p.55). The involvement of the Turkish navy in the aforementioned NATO deployment in the Aegean remains unclear, however, the report notes that the NATO-base in İzmir plays an important role.

In **Lebanon**, the Supreme Defence Council in 2019 ordered both security and military forces to guard land borders in order to control irregular entry of Syrians into Lebanon (Jagamathsingh, 2019, p.40), although a trend towards militarised borders that goes hand in glove with restrictions in migration policies has been observed since 2014 (Jagamathsingh, 2019, p.12f.). However, we can also find the military-humanitarian nexus especially against the background of the no-camp-policy by the government which leaves much space for non-state actors linked to different militias and armed groups to provide shelter and care.

For **Iraq**, the explicit involvement of military units in border management cannot be established from the report, with the exception of the navy's involvement of maritime border surveillance (Warda et. al., 2019, p.19). However, the military is involved in running internal checkpoints.

In **Hungary**, an overwhelming trend of militarisation can be observed. The report notes that in 2008, the Border Guard Force became the Border Police, thus losing its initial 'militarist identity' (Gyollai and Korkut, 2019, p.17). This was however reversed with the creation of the border hunters units in 2016:

Dsupin and Kónya note that the name *Határvasdász* ('Border-hunter') has been chosen for the military connotation of the term and its historical legacy, and not to suggest the unit would have an actual hunting role, that is, 'it is meant to carry the memory of those soldiers and military organisations who heroically defended the historical borders of Hungary against the advancing Soviet troops during World War II'. (Gyollai and Korkut, 2019, p.19f.)

Furthermore, not only can the army be deployed in border controls, in 'crisis situations caused by mass migration' the army may even be called upon to aid in the registration of asylum seekers (Gyollai and Korkut, 2019, p.20).

In addition, **Austria** resorted to the deployment of military units much more strongly, deploying soldiers in an assisting capacity for border controls (Josipovic and Reeger, 2019, p.17) and at the Brenner border crossing point directly adjacently to Italy (Josipovic and Reeger, 2019, p.12). In **Greece**, the army played an import initial role in setting up refugee camps, the hotspot centres, as well as running the logistical processes connected with these infrastructures (Ilias et. al., 2019, p.53).

For **Italy**, the deployment of the navy in the military-humanitarian operation *Mare Nostrum*, a humanitarian-military search and rescue effort between October 2013 and November 2014 is to be noted, whereas interestingly the military didn't play a big role in the emergency situations of the following years when in 2016 and 2017 the numbers of sea arrivals were rising.

### 3.2.5 New (Border) Infrastructures: Hardening of the Border

Turning from actors to infrastructure, various reports note the installation of new highly material border infrastructure and surveillance technologies as well as the creation of new kind of centres for refugees.

**Turkey** replaced the existing border fencing at the Syrian border with a concrete 'security wall' in 2016, stretching nearly 900 km (Gökalp Aras and Şahin Mencütek, 2019, p.31). It is not merely a material obstacle, but features the extensive use of border surveillance technology through its 'integrated border security system'. Already in 2011, **Greece** began the construction of a fence at its North-Eastern land border with **Turkey** (Ilias et. al., 2019, p.24), also featuring technological equipment. **Hungary** has constructed 175 km of fencing at its border with Serbia, as well as another 116 km at its border with Croatia (Gyollai and Korkut, 2019, p.18f.). Initiatives to add such fencing to the border with Romania and Slovenia respectively did not come to fruition. However, a law introduced new criminal offences in relation with the materiality of the fence, i.e. causing damage or obstructing its construction (Gyollai and Korkut, 2019, p.19). **Austria** in 2016 constructed a fence at the border crossing point Spielfeld-Sentilj with Slovenia and introduced systematic border controls at the Brenner Pass with additional barbed wire fences kept in containers (Josipovic and Reger 2019, p. 10f.).

Concerning camp infrastructures, a variety of concepts has been implemented throughout Europe. The mixed identification, registration and detention infrastructures of the hotspot centres in **Greece** and **Italy** have already been noted. **Hungary** introduced so called transit zones at its border with Serbia, which constitute the only site where asylum applications may be lodged, even though entry into the transit zones from Serbia is heavily controlled (Gyollai and Korkut, 2019, p.12). In **Austria**, former reception centres were repurposed as 'return centres', which are not detention centres, but impose restrictions of movement both legally and through their placement in remote locations of the country (Josipovic and Reeger, 2019, p.28). **Germany** introduced so called first-reception centres and ANKER-centres, i.e. integrated facilities that combine functions of reception, asylum processing and facilitation of deportation (Hänsel, Hess and Kasperek, 2019, p.28f.).

### 3.2.6 Cooperation

While the former section dealt with developments and trends within the countries studied for this report, this section will focus on various forms of cooperation. Bilateral cooperation is usually understood as cooperation with neighbouring countries; however, there are certain bilateral working agreements within the EU that will also be covered by this category. Under multilateral cooperation, we mostly understand regional cooperation involving more than just two states. Even though we have already explored EU mechanisms (Karamanidou and Kasperek, 2018), we also cover the European level in the sense of inter-level cooperation, i.e. between specific EU actors and member states. Finally, we cover relations between the

EU or its institutions with third countries, externalisation and cooperation of non-member states.

### 3.2.6.1 Bilateral cooperation

The **UK**, due to its status outside of Schengen, has long pioneered bilateral cooperation mechanisms in border control with France and Belgium. The so-called juxtaposed controls date back to 1991, and allow for the exchange of immigration officers to conduct checks and controls on the juxtaposed territory (Karamanidou, 2019, p.17ff.). Notably, these officers act independently, but in cooperation with the nation state's institutions they are deployed to, thus surpassing e.g. the competences transferred to guest officers in Frontex Joint Operations.

**Austria** similarly attempted to increase border police cooperation with neighbouring countries, such as **Italy**, **Hungary** and states of the Western Balkans. Excluding the case of trilateral patrols which will be discussed in the following section, these efforts however not seem to include the exchange or the deployment of police officers, but rather focus on cooperation and data exchange mechanisms (Josipovic and Reeger, 2019, p.14).

Different in nature are the working arrangements that **Germany** has concluded with three EU member states since 2018. In reference to Art. 36 of the Dublin regulation, which allows for bilateral administrative arrangements to 'facilitate its application and increase its effectiveness', such arrangements have been concluded with Portugal, Spain and Greece, while the conclusion of such an arrangement with Italy is still pending to date (Hänsel, Hess and Kasperek, 2019, p.39f.). In a peculiar interpretation of the Dublin system, Germany utilises these arrangements to apprehend asylum seekers at Germany's borders that have already lodged a previous asylum application in one of these countries and returns them to their jurisdiction. The argument put forward by Germany is that these working arrangements facilitate the application of the Dublin responsibility determination system, while critical voices find this argument legally dubious (Hänsel, Hess and Kasperek, 2019, p.39f.). Additionally, Germany has several bilateral police cooperation and takes part in the trilateral border control units along the Brenner route.

### 3.2.6.2 Multilateral cooperation

Multilateral, i.e. regional cooperation mechanisms seem to be much more common than bilateral agreements, even though in interviews carried out for the report on **Germany**, officials of the Ministry of Interior pointed out that bilateral arrangements still play an important role in the day-to-day cooperation at Schengen internal borders.

The report on **Sweden** notes the Baltic Sea Region Border Control Cooperation (BSRBCC) where information is shared and common actions are implemented (Borevi and Shakra, 2019, p.35). The report further references synchronised air patrols of coast guard institutions between **Sweden**, Finland, Denmark, and **Germany** (Borevi and Shakra, 2019, p.35).

**Hungary** participates in several fora, such as in the Police Cooperation Convention for Southeast Europe (Gyollai and Korkut, 2019, p.18), which exists since 2007 and like the BSRBCC does not merely include EU member states. **Hungary**, along with **Austria**, participates in the Salzburg Forum, described as a 'Central European security partnership'

since 2000. While the Visegrad Group appears in both reports on **Poland** and **Hungary**, the group is better understood as a political coordination mechanism.

A very specific form of cooperation are the so-called trilateral police cooperations that exist between a) **Italy**, **Austria** and **Germany** and b) **Germany**, **Austria** and **Hungary**. In these forms of cooperation, police officers of the three participating states carry out controls together, either in **Hungary** or **Italy** respectively, or in trains and along highways transiting the participating states (Hänsel, Hess and Kasperek, 2019, p.42f.; Gyollai and Korkut, 2019, p.37ff.).

### 3.2.6.3 European Level

Concerning the interactions between the European level and the member state level, we highlight two different categories: a) the involvement of European agencies in border management and migration control efforts, and b) the influence of European mechanisms on member state policy implementation.

For the first category, the European Border and Coast Guard Agency Frontex is the most salient instance. Given the mandate of the agency (Karamanidou and Kasperek, 2018), it has the strongest impact in member states that are policing a large portion of the European external border, i.e. in this report, **Greece**, **Hungary** and **Italy**. Even though **Poland** also shares a large part of the European external border towards the East, and also happens to host the agency's headquarter, the activities of the agency are not particularly noted in the report on **Poland**. This finding is consistent with the agency's approach of selective bordering, i.e. initiating operations at parts of the European external border where there is a need to reinforce national member state efforts at policing the border due to increased migration. However, **Poland** does support Frontex operations with staff and technical equipment (Szulecka, 2019, p.31). Thus, despite the Polish geographical context, **Poland** falls into a category of member states whose border guard institutions are deployed in other member states (and since 2016 also in third countries) through Frontex operations. This category also includes **Germany** (Hänsel, Hess and Kasperek, 2019, p.31f.), **Austria** (Josipovic and Reeger, 2019, p.18), the **UK** on a case by case basis (Karamanidou, 2019, pp.20, 38) given its special status within the Schengen cooperation. **Italy** also participates in Frontex operations, although the respective report does not indicate if **Italy** is acting as a host country, or a contributor to operations in other jurisdictions (Terlizzi, 2019, p.20). The same applies to **Greece** (Ilias et. al., 2019, p.26), which also hosts a Frontex Operational Office in the port of Pireas (Ilias et. al., 2019, p.26).

**Hungary** saw a large deployment of Frontex personnel (i.e. agency staff and seconded national officers) since 2015. The report on **Hungary** notes the integrated character of the Frontex operation with national border policing efforts, such as continuous information sharing and joint patrol activities (Gyollai and Korkut, 2019, p.38f.).

The most continuous and long-lasting deployment of Frontex personnel can be observed under the hotspot approach, i.e. in the hotspot registration centres in both **Greece** (Ilias et. al., 2019, p.27ff.,53) and **Italy** (Terlizzi, 2019, p.21). There, Frontex mostly provides pre-registration screening, nationality identification and fingerprinting. While the report on **Italy** notes the lack of a solid legal basis for the operation of the hotspots, referencing the mere existence of standard operating procedures (Terlizzi, 2019, p.36), the report on **Greece**

underlines the fact that through the reforms of the Greek asylum system since 2011, a legal basis had been *de facto* created even before the announcement of the hotspot approach by the European commission in 2015 (Ilias et. al., 2019, p.27).

For both **Italy** and **Greece**, a long presence of Frontex through various operations can be noted, dating back to at least 2006, when Joint Operation Poseidon (**Greece**) and Joint Operation Nautilus (**Italy** and Malta) were initiated. Such operations, which usually encompass patrol activities, complement the presence of Frontex in the hotspots. Politically, the strong engagement of Frontex in those two member states mirrors the respective national political discourses which emphasise burden sharing and solidarity within the EU in migration and border policies (Ilias et. al., 2019, p.42; Terlizzi, 2019, p.8).

Until 2016, the agency did not have the mandate to operate in third countries.

For the second category of interaction between the EU and member states, we highlight the impact that the Schengen evaluation mechanism (Karamanidou and Kasparek, 2018) has on member state policy implementation.

**Sweden** received harsh criticism through the Schengen evaluation mechanism in 2018:

The report was particularly critical towards the lack of enough coordination between different actors involved in border control; the lack of a national system for quality control or supervision and the fact that there was no defined decision chain between border police actors operating on the national, regional and local levels (Borevi and Shakra, 2019, p.36)

According to the country report, this evaluation triggered a national political debate after it was leaked to the public, and the government has since vowed the remedy the shortcomings (Borevi and Shakra, 2019, p.36).

Similarly, **Greece** already in 2015 was the subject of a critical report of the Commission, citing several shortcomings in terms of border controls at external borders (Ilias et. al., 2019, p.50). The country report does not indicate specific measures that the Greek government undertook to address these criticisms.

#### 3.2.6.4 Cooperation with non-EU member states

Turning to interactions between the EU and third countries, we begin with **Turkey**. Given the accession process, a strong influence of EU policies on **Turkey** can be observed. In this vein, the country report notes that especially concerning **Turkey's** Western borders, 'the most significant developments since 2011 at these borders are linked with the EU' (Gökalp Aras and Şahin Mencütek, 2019, p.20), a collaboration that was intensified in 2015. Notably, the report indicates that this collaboration often took the form of tailored bilateral agreements, such as the 2012 Memorandum of Understanding with Frontex (Gökalp Aras and Şahin Mencütek, 2019, p.25), the 2013 EU-Turkey readmission protocol, the 2015 Joint Action Plan and of course the 2016 EU-Turkey statement (Gökalp Aras and Şahin Mencütek, 2019, p.21). However, the instability of these instruments, particularly the gap between policy and implementation, needs to be noted. For example, the long awaited and promised visa liberalisation has so far seen no progress (Gökalp Aras and Şahin Mencütek, 2019, p.22).



Furthermore, the report concludes that as an actor 'on the ground', the EU is not as visible as e.g. the UNHCR (Gökalp Aras and Şahin Mencütek, 2019, p.83).

The country report on **Lebanon** notes mostly financing packages provided by the EU to **Lebanon**, mostly through the instrument of the European Neighbourhood Policy (Jagamathsingh, 2019, p.41ff.). The report further notes financing for a project on integrated border management, although this is out-sourced to the ICMPD, and the particular outcomes of this project were not clear at the time of writing. Concerning close cooperation with EU actors, the report indicated room for improvement.

Concerning **Iraq**, the report notes the EU-Iraqi Partnership and Cooperation Agreement, which was concluded in 2012, although the specific contents, and especially initiatives related to border management and migration control are not clear (Warda *et. al.*, 2019, p.9).

### 3.2.7 Human Rights and Deprivation of Rights

The last development to pick up on in this section are the transformations that fundamental rights and international law are undergoing. In this, we do not look at formal processes such as jurisprudence, but the practices around their invocation, or respectively contexts characterised by insufficient respect for fundamental rights.

#### 3.2.7.1. Pushbacks and Refusal of Entry

Alarmingly, in the majority of reports that form the base for this comparative reports, we find instances of *refoulement*, or pushbacks, illegal under the Geneva Refugee Convention and international customary law, or 'legal devices' that allow for a seemingly legitimate refusal of entry or expulsion after apprehension in cases when a person clearly states the intent to apply for asylum.

The report on **Turkey** notes that '[p]ush-backs are a longstanding policy tool and practice used by Turkish authorities, especially at the sea borders, in particular at the Aegean Sea, but also these practices exist in the land borders' (Gökalp Aras and Şahin Mencütek, 2019, p.64ff.). The report continues to cite evidence at large-scale pushbacks at the Syrian border that also involve the use of force, resulting in refugee deaths. The report on **Iraq** notes instances of denial of entry for Syrian citizens of Arab origin in the Kurdistan Region of **Iraq**, for which on the side of **Iraq** the border police of the Anbar governorate is deemed responsible (Warda *et. al.*, 2019, p.24). For **Lebanon**, the militarisation and securitisation of the border with Syria has already been noted, which translated directly into refusals of entry for Syrian nationals: 'Following this decision [in 2014], the General Directorate of General Security enforced new, restrictive immigration controls [...], which in effect shut down the borders with Syria for the majority of Syrian refugees in **Lebanon**' (Jagamathsingh, 2019, p.27). However, neither **Lebanon** nor **Iraq** have yet signed the 1951 Geneva Refugee Convention, while **Turkey** still maintains the original geographical restriction. Therefore, technically, the *non-refoulement* principle as formulated by the Refugee Convention is not directly applicable, even though Turkey is still bound by international customary law.

In the EU context, the *non-refoulement* principle is directly applicable, and also reaffirmed through multiple items of legislation and treaties. This makes the recent increase in pushback

practices as documented by the report an urgent issue. This holds especially true where such practices have been long ongoing and have been thoroughly documented.

A case in point is the particular practice of the Polish Border Guards at Terespol border crossing point with Belarus, and to a smaller extent at the Medyka border crossing point with Ukraine. The report on **Poland** notes a longstanding practice of refusal of entry even for persons showing intent to apply for international protection, since the border guards often judge these claims as 'bogus' and thus directly refuse entry into Polish territory (Szulecka, 2019, pp.45, 53ff.,69). The report on **Greece** notes that pushback practices both at maritime as well as territorial borders have long been documented, especially for the Evros region (e.g. Council of Europe, 2018; ARSIS, Greek Council for Refugees and HumanRights360, 2018; Greek Council for Refugees, 2018). Unlike in the Polish case, where the described practices are carried out in the open, in the Greek case, the authorities involved seem to act in a more clandestine manner, which has complicated the adjudication of the fundamental rights violations in national and international courts (Ilias et. al., 2019, p.48).

The **Hungarian** 8km-rule and its extension to the entire national territory, which has already been described above, constitutes a prime example of a 'legal device' legitimising pushbacks to Serbia under the guise of facilitating the lodging of an asylum application at an 'appropriate' site, i.e. the two transit zones at the border. Similarly, the Dublin administrative arrangements that **Germany** has concluded purport to form a legal basis that in practice pre-empt the lodging of an asylum application in specific cases.

For **Italy**, the report notes occurrences of pushbacks towards Slovenia (Terlizzi, 2019, p.32). However, in the context of a discussion of respect for fundamental rights and international law such as the Geneva Refugee Convention, the multifarious practices of non-assistance and negligence occurring in the Mediterranean would necessitate a separate and detailed discussion.

### 3.2.7.2 Detention

Although largely described in the preceding sections, the expansion of detention as a mechanism of migration control should be highlighted on its own. Detention, which in the context of this discussion we understand exclusively as administrative restrictions of liberty as opposed to criminal punishment, occurs mainly under two rationales, i.e. a) during the processing of asylum claims and b) as a preparatory measure for forced return.

**Hungary** was the first EU member state to introduce the possible detention of asylum seekers during the asylum process in 2013 (Gyollai and Korkut, 2019, p.24). In 2014 and 2015, the report notes that the existing asylum detention centres were operating at full capacity, necessitating an expansion (Gyollai and Korkut, 2019, p.25). However, with the introduction of the 8km-rule and the consistently applied practice of expelling asylum seekers across the border with Serbia, the use of asylum detention has considerably dropped (Gyollai and Korkut, 2019, p.25). Still, the few asylum seekers that do actually obtain access to one of the two transit zones where asylum applications may be lodged do still find themselves under deprivation of liberty. The Hungarian government argues that since any person is free to leave the transit zone to Serbia at any time, there is no detention in transit zones. In March 2017, the ECtHR has however ruled that 'holding asylum seekers in these facilities constituted

arbitrary deprivation of liberty in the meaning of Art 5 of the ECHR' (Gyollai and Korkut, 2019, p.26). The case has since been referred to the Grand Chamber of the ECtHR and is still pending. The Hungarian case is a striking example for the production of legal ambiguity through legislation that we have already noted with reference to refusals of entry.

**Germany** has since 2015 started to expand pre-removal detention capacities, since the existing facilities are considered inadequate und undersized (Hänsel, Hess and Kasperek, 2019, p.40). Lawyers and NGOs however have argued that in many cases, the decision to detain taken by foreigners' authorities have been found unlawful by courts (Hänsel, Hess and Kasperek, 2019, p.41f.,47), thus pointing to a tendency to impose detention without due consideration of the law and implicit human rights.

In **Greece**, both typologies of detention, i.e. detention of asylum seekers and people seeking to apply for asylum as well as pre-removal detention can be observed, and not only since 2015. The concrete practice of detention is regionally differentiated, the report on Greece mentions detention in police holding cells mainly for the Evros land border (Ilias et. al., 2019, p.55), while certain and changing forms of restriction of liberty or movement (the latter cannot be categorised as detention) apply especially on the hotspot islands (Ilias et. al., 2019, p.56). In addition, there exist nine pre-removal detention centres (Ilias et. al., 2019, p.58), of which three are located on East-Aegean islands and that were established after the EU-Turkey-statement through a pilot project (Ilias et. al., 2019, p.54). The report notes an increasing and excessive use of detention (Ilias et. al., 2019, p.57), despite initial attempts of the government in 2015 to limit the use of detention (Ilias et. al., 2019, p.10).

Similarly, in the **UK** detention has long been a pillar of migration governance, especially in connection with the 'hostile environment' policy. UK legislation allows for the detention of asylum seekers during the process as well as pre-removal detention (Karamanidou, 2019, p.23) without a statutory limit to its duration (Karamanidou, 2019, p.24). Often, the actual running of detention centres is outsourced to for-profit entities (Karamanidou, 2019, p.12), while also prisons are used (Karamanidou, 2019, p.31).

For the case of **Lebanon**, the report describes a long continuity of the use of detention in migration governance. Given that a vast majority of displaced persons reside in Lebanon without a legal status (Jagarnathsingh, 2019, p.33), and that detention is usually mandated throughout all judicial stages concerning irregular entry or residence (Jagarnathsingh, 2019, p.19), detention of foreigners is a wide-spread practice: 'refugees and migrants are prone to arrest and detention, notably at the country's many checkpoints' (Jagarnathsingh, 2019, p.33). Despite a formal legal basis for detention, the report notes that the actual conditions and length of detention is often at the discretion of government authorities: 'In reality, migrants in particular have been systematically reported to be confined in prolonged, and often unjustified, administrative detention for years, sometimes in spite of condemnations by the judiciary' (Jagarnathsingh, 2019, p.20). It is noteworthy that the most effective tool for correcting measures of arbitrary detention seems to stem from international law which can be mobilised in national courts (Jagarnathsingh, 2019, p.20f.).

For **Austria**, the respective country report notes that detention provisions were tightened after 2015, the maximum duration was increased to the limit allowed for by EU legislation, new grounds for detention were introduced and new detention infrastructure was constructed (Josipovic and Reeger, 2019, p.28). For **Italy**, the report highlights the lack of a legal basis for

the running of the hotspots centres (Terlizzi, 2019, p.36). Consequently, the report notes that there are allegations that migrants are detained without a court order (Terlizzi, 2019, p.37).

### **3.3 Central Themes and Narratives**

The third dimension of analysis explores narratives employed in legitimising policy change. We focus on three narratives that are common among most of the EU member states within the scope of this report: securitised constructions of migration as a threat, narratives around the perceived necessity of border controls, and narratives around humanitarianism and security.

#### **3.1. Securitisation – Migration as a Threat**

Securitisating narratives, constructing migration as threatening, are evident in all selected countries. A first theme, present in narratives in all selected countries, concerns security threats such as crime and terrorism:

The cost to the UK of undocumented passengers can be high as many go on to claim asylum. There can also be a security risk as individuals wishing to come here for organised crime or terrorism purposes may view this as a potential method of entry (Home Office 2013, cited in Karamanidou, 2019)

We do not want to see what the migrant communities of Western Europe bring: terror, public insecurities, the feeling of safety and comfort of being at home that the native nations would feel at the face of migration (Orban 2018, cited in Gyollai and Korkut, 2019)

Similarly, in Austria, Italy and Germany migrants are designated as ‘dangerous’ through their perceived association with crime while in a Swedish government bill, ‘large inflows of asylum seekers’ are depicted as threatening ‘the public order and internal security’ of Swedish society (Government Bill 2015/16:67, cited in Borevi and Shakra, 2019). This argument especially appears in relation with a description of the external border controls as insufficient, ‘with the risk that potential terrorists enter the Schengen area’ (Borevi and Shakra, 2019, 14)

A second theme depicts migratory movements as destabilising the national order of societal organisation and welfare. In the UK, Germany and Sweden, narratives also posit migration movements as threatening for social cohesion and the broader well-being of society. According to the UK prime minister, migration has negative effects on ‘on social cohesion, on our infrastructure and public services, and on jobs and wages’ (2012, cited in Karamanidou, 2019); an interviewee in Germany argued that it ‘is ultimately about not over-stretching the willingness and capability of society and the state to receive immigrants. Because doing so leads to a destabilization of the community...’ (Interview B, cited in Hänsel, Hess and Kasperek, 2019). Likewise, in the case of Sweden ‘societal functionality’ is defined as part of national ‘security’ (Government bill 2015/16:67, cited in Borevi and Shakra, 2019).

A different, more racially inscribed argument can be observed in Hungary and Poland where migratory movements are depicted as a threat to cultural and national identity. V. Orban, for

example stated that ‘we do not want to become a nation of migrants’ (2018, cited in Gyollai and Korkut, 2019) and that ‘the European people can be exchanged with migrants. [...] The nation, the national identity and national feeling are negative and considered as dying [...]’ (Orban 2018, cited in Gyollai and Korkut, 2019). In Poland, constructions of threat evolved around religion and the perceived incompatibility between Islam and Christianity, a theme also present in Hungary (Gyollai and Korkut, 2019; Szulecka, 2019). The perceived threats to identity were linked primarily to the 2015 migratory movements, which were seen as uncontrolled (Gyollai and Korkut, 2019; Szulecka, 2019). However, in the case of Poland and Hungary in particular, perceived threats to identity have permeated narratives in response to 2015 (Podgórzńska, 2019; Thorleifsson, 2017). Further, the intensity of threat-construction in Poland and Hungary, evolving around issues of identity but also Euroscepticism and hostility to Europeanisation (Gyollai and Korkut, 2019; Szulecka, 2019) reflects to a large extent the impact of the right-populist politicisation of migration (Börzel and Risse, 2018).

In short, the analysis of narratives in the selected countries reaffirms the extent to which securitising discourses have dominated the political and public debates, especially in a heightened degree since 2015 (see also Ceccorulli, 2019; Krzyżanowski, Triandafyllidou and Wodak, 2018; Thorleifsson, 2017; Triandafyllidou, 2018).

### **3.2. Border and Migration Control**

Controlling the border and migration are constructed as the solution for addressing the perceived threats presented by migratory movements in all selected countries. According to a Home Office press release

A safe and secure border means not just better immigration control, but safer streets and more secure citizens. There can be no compromises on border security. In a dangerous world, our border is one of our main protections (Home Office 2012c).

Similarly, according to a representative by the Federal police in Germany, controlling the border is an integral part of an ‘integrated migration management-strategy’ and necessary for ‘securing or maintaining social cohesion’ (interview B, cited in Hänsel, Hess and Kasperek, 2019). Such statements articulate a necessity and inevitability of controlling the border which is constructed as a protective institution vis-a-vis the national social state (Vollmer, 2017; Yuval-Davis, Wemyss and Cassidy, 2019). Only one quotation from the Minister of Citizen Protection in Greece admitting that ‘the fences and the walls cannot stop the flows of the forced moving populations’ (2017, cited in Ilias et. al., 2019), suggests a different understanding. However, the same actor stated that ‘this does not mean that Europe can and must pursue a policy of ‘open’ or ‘fluid’ borders’ (Ministry of Citizen Protection, 2017, cited in Ilias et. al., 2019).

The external border of the Union, and the perceived deficiencies in its control are the focus of border narratives in Germany, Hungary, Poland, Greece and Sweden.

There are still deficiencies in the controls of the external borders across the Schengen area, which means Sweden must keep the internal border controls. (Government 2019, cited in Borevi and Shakra, 2019)

When we defend our borders, we do not only do something for Hungary, not only protect Hungary's interests, but the whole, everyone who is behind us, that is, the whole Europe. Those EU member states, which fail to defend the European borders, are the ones that fail to maintain solidarity with the other European Union member states. We expect that they should not allege us with failing the European solidarity and talk about lack of solidarity [when they mention] Hungary (Orban 2016, cited in Gyollai and Korkut, 2019)

The emphasis on controlling the border – and in particular the external borders of the EU evokes both constructions of national sovereignty and solidarity. Political narratives in the UK construct the control of its borders as primarily an exercise in national sovereignty, not a common, europeanised area of responsibility. In the words of Theresa May, the 'problem' of the 2015 migratory movements 'can only be resolved by nation states taking responsibility themselves – and protecting their own national borders' (May 2015, cited in Karamanidou, 2019), a sentiment echoed in the extract from Orban's speech.

However, narratives on the border are also linked to perceptions of solidarity in controlling the external border. In Orban's speech, controlling the external border is linked both to national interests but also to an understanding of solidarity as participating in efforts to control the borders of the EU. In political discourses in Hungary and Poland in particular, participating in such efforts – for example through providing border guards for Frontex in the case of Poland and the perception that it protects the EU's Eastern border – is an expression of solidarity that they prefer over schemes such as relocation (Gyollai and Korkut, 2019; Szulecka, 2019).

Narratives in Greece and Italy evoke instead solidarity to call for EU assistance in controlling the external borders of the Union, a theme that predates the migratory movements of 2015:

[A] system that leaves the individual coastal states of the southern Mediterranean alone to manage unilaterally or bilaterally such important issues as illegal immigration cannot work [...]. (Maroni, 2017, cited in Terlizzi, 2019)

In particular, my country, due to its enormous coastline and its many islands, lifts a disproportionate burden in order to manage the illegal migratory flows that have their final destination in central and northern Europe. [...] The stifling pressure on the eastern and southern borders of the European Union cannot leave any European member state indifferent (Hellenic Parliament, 2014, cited in Ilias et. al., 2019).

In the post-2015 context, in Greek narratives emphasise that joined efforts in protecting the external border are necessary for protecting the character of the European Union.

Europe will be able to respond effectively to the challenge of managing mixed flows only if it does it as a whole, in a coordinated and especially cooperative way in terms of true solidarity [...] The EU united stance is tested by the national interests of the member states that have emerged, in the most cruel way, through the security dimension of the refugee crisis. If the Union fails to effectively protect the external borders and secure the fair burden sharing among member states, the risk of a more comprehensive nationalization of policies will become a reality (Ministry of Citizen Protection, 2017, cited in Ilias et. al., 2019).

In this regard, the national report on Greece shows that the notion of national sovereignty has been changing whereas 'the migratory-refugee crisis has questioned the notion of territorial sovereignty as a structured entity' and gave way to an Europeanised version appreciating 'EU assistance' (Ilias et. al., 2019, p. 47).

EU member states without a significant section of the external border, for example Germany, Sweden and Austria articulate the question of solidarity, sovereignty and externalisation in a different way. For them the 'deficiencies at the EU external border' were not only perceived as challenging national security, as e.g. argued in the Swedish government bill for the reintroduction of national internal border controls of 2016 and 2019 Borevi and Shakra, 2019, 14). To them, the question of border control was additionally linked to the phenomena of 'secondary movements'. For them, it was one of the main arguments for the repeated application of the exemption provisions of the Schengen border code (Art 25, 29) that allow for the temporary reintroduction of national border controls (Josipovic and Reger 2019, 25 and 39).

Overall the border in the political narratives of most selected countries is conceptualised in the narrow sense: as a line of demarcation between states or between the EU and territories outside it - there is little to suggest in most countries that the border is conceptualised in the sense of a dispersed assemblage of institutions, practices and actors both beyond and within the territories of member states and the European Union (Balibar and Swenson, 2004; Yuval-Davis, Wemyss and Cassidy, 2019; Vollmer, 2017). However, a more holistic understanding of border control emerges in particular in Italian and German narratives. On the one hand, there is an emphasis on policies of detention and return as part of border management (Hänsel, Hess and Kasperek, 2019; Terlizzi, 2019). On the other, Italian and German narratives focus on externalisation and cooperation with third countries as essential for preventing entry and thus perceived threats from reaching European territories.

The idea is to fight crime where it arises, where it comes from. At the root, so to speak, at the place of origin, if you take the local component now, with the goal that it never reaches Germany in the first place. (interview D, cited in Hänsel, Hess and Kasperek, 2019)

[T]he external dimension of migration policies is fundamental for the survival of Schengen and the principle of free movement. The management of migratory flows is no longer sustainable without a targeted and enhanced cooperation with third countries, both of origin and transit (Renzi, cited in Terlizzi, 2019)

### **3.3 Humanitarianism, Human Rights and Security**

The reports indicate that humanitarian narratives – namely calling for protecting the lives of migrants and providing assistance – and human rights discourses are continuously present in several selected countries.

Some reports suggest that humanitarian and human rights narratives have been if not dominant at least as significant in different periods. In Sweden, more liberal tendencies can be observed in narratives around increasing rights of refugees and migrants at the beginning of the 2010s (Borevi and Shakra, 2019, 11). For instance, at the very beginning of the mass migration movements in 2015 German and Swedish authorities called for the public to 'open

your hearts' (Dagens Nyheter 2014, cited in Borevi and Shakra, 2019), also the Greek Syriza government called in 2015 and 2016 for a 'human security' approach and declared that 'Greece of Humanity stands against the ...fences and closed borders' (Ilias et. al., 2019, p. 46), while the Italian ministry of the interior still stated in 2017 that 'it is a moral duty to welcome those who flee war, those who flee famine, unaccompanied minors: we will always welcome them' (Minniti 2017, cited in Terlizzi, 2019).

However, these narratives coexist with narratives of control and as in the Italian case of the Mare Nostrum operation shows, go hand in hand (Terlizzi 2019). The following quote by a Polish MP exemplifies that providing protection is perceived as a response alongside border control, which is constructed as the primary one:

We tried to solve the problem in a complex manner. We stated clearly: the first thing is to strengthen the borders of the European Union. Secondly, there is a need to clearly differentiate refugees from economic migrants. If someone comes from a relatively safe country, they should be sent to the country of origin. Additionally, there must be verification centres. That is why we agreed – provided that this is an element of this programme – for one-time, not permanent, relocation of thousands of refugees, since such number was adequate for Poland. This is the number that we could easily accept, nothing bad would happen in Poland. We would be helping people who authentically need this help [...] (Trzaskowski, 2016, cited in Szulecka, 2019)

In a similar manner, sea rescue activities in Italy are linked to securitarian aims of preventing departure and enhancing returns:

the [...] Italian strategy [...] focuses [also] on supporting Libyan authorities responsible for border control and flow management. [This strategy] contributes to reducing the risk of accidents and shipwrecks, a risk that can only be eliminated by stopping departures (Minniti, 2017, cited in Terlizzi, 2019)

cooperation in border surveillance at sea is absolutely important, together with that of repatriation, because it serves to prevent landings, which is always the best thing to do since it makes it possible to save human lives (Maroni, cited in Terlizzi, 2019)

Such statements should thus be seen as part of the 'securitarian-humanitarian nexus'. On the one hand, narratives reproduce migrants both as lives to be saved as well as to be subjected to control (Vaughan-Williams, 2015). On the other, they point to the extent to which humanitarian discourses have become interlinked with discourses of the border, especially in constructions of a 'safe' and 'secure' border - and border management (Vollmer, 2017; Williams, 2016).

The connection of human rights standards and border control is much weaker in the narratives of the selected countries. The administration and the political apparatus in Germany still highlight the significance of adhering to human rights in the context of border management in the years following 2015, but indicate that these standards are increasingly seen as an obstacle for an effective return policy (Hänsel, Hess and Kasperek, 2019).



## 4. Analysis of findings

In this section of the report, we will summarise our findings and analyse them in the light of the theoretical and conceptual discussion. Our focus lies on the complex multi-level and network-like character of the policy field, especially focusing on the complex relations between EU and member states and its changing nature and its dynamics. We discuss EU externalisation policies towards transit and source countries and which relations and dynamics they bring about. Through this approach, we elaborate a critical stance towards conceptualisations that perceive this process as top-down.

### 4.1 Patterns of Divergence and Convergence in Law and Policy

The legal frameworks on border management and migration controls in EU member states are largely harmonised at the level of formal transposition. In addition to the key regulations, all selected member states apart from the **UK** have adopted the relevant directives. While the UK selectively adopts instruments on the basis of opt-in arrangements, it has nevertheless transposed into domestic law several instruments in the domain of border management and migration control. Therefore, while the UK legal framework differs in some respects, there is a degree of alignment in areas regulated by EU law, such as visas, carriers' liability and returns.

However, as the country reports demonstrate, there is still considerable divergence among the legal frameworks of the selected member states. Like in the CEAS, the domain of border management and migration controls is not fully harmonised: it still reserves some competences for member states, and **leaves a degree of leeway** for member states to adapt EU law during their transposition (den Heijer, Rijpma and Spijkerboer, 2016). To a large extent, the differences observed in terms of specific arrangements is attributable to **the discretion afforded to member states** by EU law. For example, **Austria, Germany, Greece, Hungary** and **Sweden** have all used the derogation powers under article 2(2) of the Return directive, have applied grounds for detention that go beyond those referred to in the text of the directive, and have entry ban lengths that surpass the recommended maximum of five years. Likewise, domestic frameworks differ in the area of facilitation, in particular regarding the transposition of humanitarian and financial motivation clauses, and the level of penalties imposed – as is the case with penalties within the scope of the Carriers' liability framework. A further reason for the observed divergence is the degree of competence maintained in certain areas by member states. As unauthorised entry is not criminalised in EU law, and border areas are in some member states excluded from the scope of the Returns directive, it is regulated by national law. With the exception of employers' sanctions, internal migration controls such as ID checks under Article 23 of the Schengen's Border Code are an area of national competence.

The case of legal reforms in Hungary is beyond the scope of divergences outlined above. Legal reforms at the domestic level introduced since 2013, and especially in response to the migratory movements of that year did not conform to EU instruments, to the point that the Commission started two infringement proceedings in 2017, which led to the referral of Hungary to the CJEU in 2018, and 2019 (European Commission, 2019). The proceedings focus on a number of legal provisions pertaining to border management and control and their implications for access to the asylum process. Limited access to the transit zone, the only location where

asylum applications could be submitted, constituted a failure to provide access to the asylum procedure. In relation to the provisions of the Return Directive, the Commission referred to illegal returns to Serbia and that the compulsory containment of asylum seekers in transit zones constituted systematic, indefinite detention in violation of the provisions of the Directive (European Commission, 2017, 2018, 2019). In addition, Hungarian law failed to guarantee the procedural safeguards such as the issuance of individual return decisions and the right to appeal stipulated by the Directive and violated both the Return and Reception directives by not providing food to detainees (European Commission, 2017, 2018, 2019).

Overall, legal frameworks of border management and migration control have been harmonised by 2015. However, the case of reforms in the field of return policy post-2015 show the need to take into account of complex interactions among actors and levels. Increasing returns was designated an area of priority in the European agenda on migration, and the Commission issued two Action plans in 2015 and 2017. Several of the selected member states changed their legal framework to facilitate return (European Migration Network, 2017). One of the changes introduced in Germany in 2016, restricting the consideration of health grounds to prevent deportation, was included in the Commission's 2017 Recommendations on Return. Following their introduction, Italy raised the minimum detention length from 3 to 6 months and Austria the maximum duration of detention to 18 months in line with the recommendations.

This bidirectional transference of legal measures is also illustrated by the process of recasting the Returns directive. The draft text agreed by the Commission and the Council incorporates not only some of the Recommendations and content of the 2017 Returns Handbook, but also reflects provisions in member states' legislative frameworks. For example, the extended list of criteria on the risk of absconding in the text of the recast directive draws on their definition in the national frameworks of member states in line with Article 3 (7) of the 2008 directive and relevant practice. Thus, the proposed 'objective criteria' include non-compliance with voluntary departure, prior criminal offences and opposing the enforcement of return decisions which had been already present in the legislation and practice of member states. In a similar vein, the recast directive includes a new ground for detention, posing a risk to public policy, public or national security, which was already present in the legal frameworks of six of the selected states.

While these findings are not a direct contradiction with the MLG-approach, which is after all also interested in how competences or authority is re-allocated in multi-level polities such as the EU, the findings point to a new dynamic of competence allocations after 2015 which are not uni-directional. Rather, we see a complex interplay between re-nationalising tendencies and appeals to supranational harmonisation which will not necessarily result in a clear separation of levels, but forms of authority which cut across levels and arrange their respective actors in networks, and networks of networks. The most striking example is the construction of the European Border and Coast Guard as a network of member state institutions and the European agency Frontex, or the aggregation of national and European agencies through the hotspot approach. In order to further analyse these emergent forms of border management and migration control, a methodological departure from a pure MLG-approach would however be necessary.

## 4.2 EU-Externalisation and regional migration and border regimes

The legal framework of **Turkey** is the most closely aligned with EU legal provisions, which can be attributed both to the accession process in general, and the on-going although conflictual cooperation in the field of migration control. Specifically, the visa liberalisation process as an incentive on behalf of the EU needs to be mentioned here, since it requires wide-ranging and particularly technical alignment with the Schengen Acquis and other legal instruments on border management and migration control. However, the report on Turkey also clearly underlines that policy change in Turkey cannot be reduced to a function of EU expectations, in many instances, national interests and regional or geopolitical policy rationales are identified which factor into specific policy changes much stronger than EU influence (Gokalp Aras and Şahin Mencütek, 2019; see also Genç, Heck and Hess, 2017).

The same can be argued in the case of **Iraq** and **Lebanon**. Their legal framework pertaining to border management and migration control appear to have been influenced to a lesser extent by EU externalisation efforts. Some legal developments such as the introduction of the Foreigners Residency Law in Iraq in 2017 and Lebanon's 2012 Partnership agreement suggests the influence of the EU, including the partnership agreements signed with the two countries and the European Neighbourhood Policy. Yet, the reports also suggest that the border management and migration control frameworks and practices are influenced by historical legacies and political contexts specific to these countries. Legal arrangements in Iraq were shaped by the country's governance by the Coalition Provisional Authority, since many current instruments were introduced during the time it was in power (Warda et al 2019, p.13-14). The Coalition Provisional Authority's orders contain provisions – for example on carrier sanctions, entry and visas – are similar to those of the EU legal framework but predate the 2012 EU-Iraq Partnership and Cooperation agreement.

Another feature that highlights the specificities of the three non-EU member states is the configuration of actors involved in border management and migration control. While a trend towards civilianisation can be observed in **Iraq**, it can be attributed to the reforms introduced by the Coalition Provisional Authority. As discussed earlier, in **Turkey** the military not only remained a significant actor in border management and migration control, but also expanded both its military and humanitarian activities. Further, IGOs and NGOs seem to play a stronger role in the implementation of border and migration control policies. In Iraq and Turkey, for example, the IOM is heavily involved in capacity building and training (Gokalp Aras and Şahin Mencütek, 2019; Warda et al 2019). The UNHCR and domestic NGOs are equally involved in activities that combine humanitarian and control dimensions, especially in **Turkey** and **Lebanon** (Gokalp Aras and Şahin Mencütek, 2019; Jagarnathsingh, 2019).

Therefore, while the legal regimes of border management and migration control in Lebanon and Iraq present many similarities with those of the EU member states within the scope of this report, this cannot be attributed only to the externalisation of EU policies. The argument that non-EU states are not passive recipients of EU policies (Trauner and Wolff 2014; Wunderlich 2012) is certainly true, especially in the case of Turkey. However, the historical and political specificities of Iraq and Lebanon in particular suggest that laws policies and practices of border management and migration control can be also located both in global and regional regimes of mobility and its control. These involve not only state actors -both civilian and military but also

international organisations and NGOs which act as a 'global police of populations' (Scheel and Ratfisch 2014).

### **4.3 Comparing EU and non-EU Perspectives: the Porous and Always Contested Border versus the 'Sovereign Border'**

The reports on **Turkey**, **Lebanon** and **Iraq** suggest the porous nature of borders in the region. In all three countries, their border(land)s with Syria were spaces of mobility based on social ties and labour needs. Despite that these forms of mobility also included armed groups and were shaped by political conflicts, the governance of the three countries' border with Syria exemplified an approach to border policing that took mobility as a norm, and that imposed regulation of mobility as a reaction to perceived crises or threats.

Such a perspective is equally applicable to European border and migration policy, even though it necessitates a careful excavation of the many sedimented layers of policy. Assuming mobility as a norm is exemplified by the core rationale of the Schengen area as an area without internal border controls. Even the temporary re-introduction of border controls such as in **Sweden**, **Germany**, and **Austria** do not contradict this assessment, since they can equally be interpreted as specific policy responses to perceived deviations, here: secondary movements of asylum seekers along specific routes.

But even concerning the Schengen external border, the reports drawn on for this assessment outline many instances of regional practices of cross-border mobility that were regulated more strongly only over the last twenty years in a process intimately connected with the Europeanisation of migration and border policies. Many of the successive restrictions of cross-border mobility can however also be interpreted as reactions to emergent new practices of migration, this holds especially true for countries with a large segment of the external border such as Italy, Hungary, Greece, and Poland. However, the territorial constitution of the European project through the Schengen Agreements complicates this analysis, since at its core, the agreements construct regionally tolerated practices of mobility as a potentially negative impact on the entire EU territory, thus triggering EU policies at harmonisation as the enforcement of the lowest common denominator.

Yet, while some forms of mobility are desirable – or tolerated - the country reports point a strengthening of the border, defined not only as a territorial demarcation line but as a set of governance practices towards 'unwanted' migration. At the discursive level, this is reflected in pervasive narratives of security and border that are present in all countries considered in our analysis. The strengthening of the border is exemplified by an array of measures present in all countries included in the scope of the report, in all domains of border management and migration control. Reinforced controls at the external border incorporate objects such as fences and walls in the case of Greece, Hungary, and Turkey, but also the expansion of capacities and technologies, including the use of EU databases. The tightening of the border and the securitisation of the policy field also entails a new emphasis on return and detention policies at the legislative, policy and implementation level. While this trend applies in all cases, it is particularly noticeable in Germany, Austria and Sweden, and running parallel to the increase of migratory movements since 2015. Similarly, internal control mechanisms such as

residence rules and reporting mechanisms – often an understudied aspect of border control regimes – have been used to support the expansion of detention and return regimes, especially in Germany, Sweden, Austria and the UK. In other cases – notably Turkey and Greece – internal controls regulate the internal residence and movement of migrant populations. Hungary only allows asylum application in the closed off transit zones where the asylum seekers have to stay.

The range of actors involved in border management and migration control equally suggests the expansion of control regimes and increased securitisation. In addition to civilian actors that are normally tasked with such responsibilities, the country reports indicate the involvement of military and para-military bodies. In some countries, such as Lebanon and Turkey, the army is explicitly tasked with controlling migration at the border. Austria and Hungary introduced military and para-military units at their border. In the same category, although more decoupled from the EU, falls the deployment of NATO vessels in the Aegean (Fernández, 2016). On the one hand, this is not a particular surprise, given that borders have long been associated with the military and a rationale of territorial defence (Walters 2002). However, it has been an explicit rationale of the Schengen Acquis and the accession process to introduce civilian organizations to this policy field, illustrated also by a comparable trend in Turkey and Iraq.

This expansion and strengthening of control regimes also intersect with discourses and practices of humanitarianism - and in limited cases of human rights. Greek report shows even for the year 2015 that the government ‘adopted liberal attitudes towards migration’, that also led to liberalizing and rights enhancing measures like the closure of detention centres (Ilias *et al.*, 2019, 12). The Italian report notes an ‘alternation of narratives over humanitarianism and securitization of border management and migration control’ (Terlizzi, 2019, 27). Beyond narratives, the interlinked nature of humanitarian and border management activities and actors. The Turkish military, for example, participated in the construction of camps in North Syria, suggesting what Gokalp Aras and Şahin Mencütek (2019) aptly call a ‘military-humanitarian nexus’. Actors involved in the surveillance of sea borders, both civilian and military, also conduct search and rescue operations, similar to the EU’s operation EUNAVFOR MED, later renamed Operation Sophia, in the Mediterranean (Cutitta, 2018). These cases show that humanitarian rationales are not only linked but are intrinsically intertwined with discourses and practices of reinforced border control practices. A different manifestation of the security-humanitarian nexus concerns the tendency to discipline and criminalize humanitarian and human right activities, particular evident in Hungary, that can be interpreted as the return of a sovereign state.

Yet, the forced migrations of 2015 do not necessarily constitute the ‘watershed moment’ for the strengthening of borders as they have often been described. For the case of **Lebanon**, **Iraq**, and **Turkey**, this is abundantly clear. The assessment however also holds for the **UK** and **Poland**, which are not destination countries of the forced migrations of 2015, even though policy change was in both cases legitimated through a discourse of a ‘European refugee crisis’. **Hungary** then had already started imposing harsher border management and migration control practices before 2015, while both **Greece** and **Italy**, incidentally the two countries for which the hotspot approach was triggered, also need to be excluded from such a narrative. In the case of **Italy**, the history of a porous and contested border in a European context can be traced back at least to the 1990s (Paoli, 2015). Similarly, securitarian-humanitarian narratives and practices can be traced back to the first cooperation agreement signed between Italy and Libya in 2003 (Terlizzi 2019). For **Greece**, the overhaul of its entire migration management

apparatus then can be traced back to the years 2010/11, thus preceding the arrivals of 2015 by many years and as strongly outlined in the report on Greece. Indeed, treating Greece as a 'terra nullis' that only appeared on the map of migration policies in 2015 is a serious fallacy (Cabot, 2019).

## 5. Conclusion

This report provided a comparative overview of the key findings concerning the governance of border management and migration control in the eleven countries of the RESPOND consortium. Drawing both on the theoretical frameworks of multilevel governance and other theoretical perspectives – critical migration and security studies, border studies – we here outline some of the key conclusion that arise from the analysis of the findings.

First, we observe a high degree of complexity in terms of legal arrangements and their implementation. Even though most of the legal frameworks of EU member states in this project – with the partial exception of the UK – are harmonised with the EU *acquis* in the field of border management and migration control, they diverge both at the level of transposition and implementation. This is partly due to the leeway provided in EU instruments in what concerns their legal transposition, but also to their implementation at the national level.

Additionally, reports on Germany, Sweden and Poland have revealed a degree of dissatisfaction with the current state of Schengen governance. On the one hand, the continued prolongation of nominally temporary Schengen-internal border controls is at odds with the overall rationale of the Schengen area as an area without internal border controls. We have outlined that these measures do not necessarily translate into a political demand to roll back these achievements. However, there are indications that member states feel that Schengen governance and rationale are perceived as outdated and need to undergo an update.

A further level of complexity is added if we take into account the three non-EU countries within the scope of this report, where the influence of EU law varies considerably. While Turkey's legal framework is aligned to a greater degree because of the accession and visa liberalisation processes, legal arrangements and implementation practices in Lebanon and Iraq are shaped to a larger extent by the historical and political contexts of these countries, including legacies of colonialism and military interventions, regional conflicts and diffusion of power among political authorities and military actors.

We also observe that the transposition and implementation of legal provisions – international and European - and the practices of border management can alter the legal landscape. This does not only challenge assumptions about harmonisation, but also raises questions about the relation between the governance of borders and human rights. In the European context, Hungary is the most extreme example, in that its legal framework and its implementation directly contravenes European law and human rights norms. In the case of other countries, pushbacks and refusals of entry demonstrate how border management practices inhibit access to protection. In a less dramatic but equally significant manner practices of detention and regimes of internal controls – such as restriction of movement at the domestic level – have expanded, in some cases in response to the 2015 migration movements, in others – notably the UK – due to domestic developments.

To this extent, we observe a dominant process of securitization and tightening of borders. This trend, which is observed in all eleven countries, is manifested through the reinforcement and frequently militarisation of the border and of border control practices and deployment of border infrastructures which are reaffirming traditional concepts of the border. The prolonged-reintroduction of internal border controls by three of the countries – Germany, Sweden and Austria – further illustrates the proliferation of borders as a response to the 2015 migratory movements in Europe. However, in this context we also observe increased interactions between securitarian and humanitarian logics. This is manifested at one level in narratives of border management and migration control, whereby discursive securitisation co-exists with narratives of humanitarianism – the latter often acting as legitimating devices for the former. In terms of policy practices, border surveillance operations, especially at sea, are interlinked with search and rescue operations. Military actors in some countries – notably Greece and Turkey – are involved in humanitarian activities such as building camps or contributing to their operation. Conversely, intergovernmental ‘humanitarian’ actors such as the UNHCR or IOM participate in border management practices, for example by registering and screening populations.

The comparative findings also showcase the multiplicity of actors, processes and practices involved in the governance of border management and migration controls. While, for example, it is assumed that domestic legal provisions and their change are shaped by EU legal frameworks and reforms, the process of recasting the Returns directive demonstrates that proposed provisions reflect in fact the practices of member states. EU member states engage both with EU-wide border management regimes and actors such as Frontex, but also with bilateral and trilateral patterns of police cooperation. Further, we see a multiplication of actors since 2015, leading to an intensification of hybrid forms of governance. Despite processes of civilianisation of border control not only in EU countries but also in Turkey and Iraq, military actors are still heavily involved in border surveillance and control, while military-like units tasked with border control emerged in different national settings. Responsibilities over the governance of borders are dispersed across regional, national and subnational actors, while their implementation relies often on non-state actors such as international governmental organisations, NGOs and for-profit actors.

While some versions of the multi-level governance framework assume clearly delineated ‘levels’ of legal authority and implementation – regional, European, national, local – this runs the risk of obscuring interactions across levels. This has less to do with the mere presence of actors, but with the way they engage with each other in modes of networked governance.

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